SUBMITTED

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 198

GEO. O. RICHARDSON MACHINERY COMPANY,
PETITIONER,

vs.

MRS. ANNIE SCOTT, ADMINISTRATRIX OF THE ESTATE OF JOHN A. SCOTT, DECEASED

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

PETITION FOR CERTIORARI FILED MARCH 31, 1937

CERTIORARI GRANTED APRIL 12, 1937

(32,955)

(32,555)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 10, 1927

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TRANSCRIPT OF RECORD

Filed in Supreme Court of Oklahoma Dec. 11, 1922.
WM. M. FRANKLIN, Clerk.

In the Supreme Court of the State of Oklahoma.

Geo. O. Richardson Machinery Company, a corporation, Plaintiff in Error, vs. John A. Scott, Defendant in Error. No. 14,084

PETITION IN ERROR.

The said Geo. O. Richardson Machinery Company, plaintiff in error, complains of the defendant in error, John A. Scott, because the said John A. Scott, on the 23rd day of October, 1920, at a regular term of the District Court of Oklahoma County, State of Oklahoma, recovered a judgment by the decision of said court against the plaintiff in error, Geo. O. Richardson Machinery Company, in a certain action then pending in said Court wherein the said John A. Scott was plaintiff and the said Geo. O. Richardson Machinery Company was defendant; and because, thereafter and on, to wit, the 13th day of June, 1922, the said District Court of Oklahoma County, State of Oklahoma, entered its judgment sustaining a demurrer to the petition of this plaintiff in error, Geo. O. Richardson Machinery Company, to vacate and set aside the said judgment in a proceeding as authorized by the laws of the State of Oklahoma, and thereupon refused to vacate the said judgment and dismissed the said petition at plaintiff's costs. The original case made, duly certified and attested, is attached as Exhibit "A" to this petition in error and made a part hereof; and the said Geo. O. Richardson Machinery Company, plaintiff in error, avers that there is error in said record and proceedings in this, to wit:

(1) The Court erred in sustaining the demurrer to the petition to vacate judgment filed by the plaintiff in error in the District Court of Oklahoma County, on June 1, 1922.

(2) The Court erred in dismissing the petition of the plaintiff in error to vacate judgment after plaintiff in error refused to plead further.

Wherefore, the plaintiff in error prays that said judgment so rendered, dismissing the petition to vacate judgment, be reversed, set aside and held for naught, and that the plaintiff in error have judgment of this Court directing the trial court to sustain the petition to vacate judgment and to vacate the judgment rendered on October 23, 1920, in favor of the defendant in error and against the plaintiff in error herein, or that this Honorable Court render such other judgment herein as may be consonant with the law and equities of this plaintiff in error, and for such other relief as to the Court may seem just.

GEO. O. RICHARDSON
MACHINERY COMPANY,
Plaintiff in Error.

By (Signed) LINEBAUGH and PINSON,
Attorneys

SUPREME COURT—No. 14,004.

In the District Court of Oklahoma County, State of Oklahoma.

Filed in District Court, Oklahoma County, Oklahoma Dec. 11, 1922, Cliff Myers, Court Clerk, by Wm. D. Thompson, Deputy.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a corporation, Defendant. No. 29,106.

CASE MADE.

Tried in The District Court of Oklahoma County, State of Oklahoma, on the 13th day of June, 1922, before Honorable James I. Phelps, Judge.

APPEARANCES:

The plaintiff, JOHN A. SCOTT, present in person and by Mr. Charles L. Moore and Messrs. Everest, Vaught & Brewer all of Oklahoma City, Oklahoma; Mr. Everest of Counsel, his attorneys of record.

The defendant, GEO. O. RICHARDSON MACHINERY COMPANY, a corporation, present by Messrs. Linebaugh & Pinson of Muskogee, Oklahoma; Mr. Pinson of Counsel; its attorneys of record.

M. E. FULLENWIDER,
Official Reporter.

Filed in Supreme Court of Oklahoma Dec. 11, 1922, William M. Franklin, Clerk.

BE IT REMEMBERED: That this cause was instituted in The District Court of Oklahoma County, Oklahoma, on the 10th day of September, 1920, by the filing of a Petition with the Court Clerk of said Court; a full, true and correct copy of said Petition, together with all endorsements thereon, is in words and figures as follows, to wit:

"In the District Court of Oklahoma County, State of Oklahoma.

Filed in District Court Oklahoma County, Oklahoma, Dec. 11, 1922, Cliff Myers, Court Clerk, By Wm. D. Thompson, Deputy.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a corporation, Defendant. No. 29,106.

PETITION OF PLAINTIFF.

Plaintiff complains of the defendant and for causes of action against it, states:

FIRST CAUSE OF ACTION.

1. That plaintiff resides at Oklahoma City, Oklahoma, and has been for many years engaged in the State of Oklahoma in the threshing of grains, and at certain times as Agent in making sales of threshing machinery for defendant on a commission basis.

2. That the defendant is a foreign corporation, duly organized and existing as such under the laws of the State of ....., having its home office and principal place of business in the city of St. Joseph, in the County of Buchanan and State of Missouri, with a branch office at Wichita, Kansas, and is now and has been for several years last past engaged in the general business of selling threshing machines and their several parts in the wheat growing States, including the State of Oklahoma.

3. That said defendant, although now doing an extensive and general business in the said State of Oklahoma, wholly fails, neglects and refuses to appoint, designate or constitute an agent for the service upon it of Court and legal process as by the Statute in such cases made and provided, and plaintiff asks that he be permitted to serve the summons herein upon the Secretary of State as allowed and provided by Section 1339, Chapter 15, Article 9 of the Revised Laws of Oklahoma of 1910.

4. Plaintiff further states that on or about August

6th, 1893, the defendant isued in writing to Scott & Peshek, its commission certificate in the sum of $108.00, bearing said date, No. 636, against note No. 677 given and dated June 19th, 1893, due November 1st, 1893, by Joseph Novak, F. R. Novak and Frank Worestek, to the defendant in payment of threshing machinery sold by said Scott & Peshek as agents for the defendant. That a copy of the said commission certificate with all endorsements thereon is hereto attached, marked Exhibit "A" and made a part of this petition. That plaintiff purchased the interest of the said Peshek in said certificate and is now the sole owner of the same and of all moneys due thereunder; that said note was paid to defendant in full by the makers thereof some time in the fall of 1893, the exact date being to plaintiff unknown, thereby rendering said commission certificate immediately due, together with interest thereon until paid at the rate of 10% per annum.

5. That upon the collection of the note aforesaid, the defendant withheld and concealed from the said Scott & Peshek, and both of them, and from this plaintiff, the fact of said collection; the fact of said collection of said note being a condition precedent to anything ever becoming due under the said certificate, and that the said Scott & Peshek or either of them, nor this plaintiff, ever learned of the collection of the said note until on or about the .... day of ....., 1919, and within a time less than three years before the commencement of this action. That there is now due plaintiff from defendant on said commission certificate the sum of $416.23, for which judgment is asked.

SECOND CAUSE OF ACTION.

Plaintiff for his second cause of action re-states and re-pleads as part of this cause all of the allegations set out in the above and foregoing statement of his first cause and further states:

1. That during the threshing season of 1919, the plaintiff being the owner of a threshing machine out-fit

sold by defendant, ordered of the defendant, certain parts and repairs therefor, the same being in two shipments from St. Joseph, Missouri to Hobart, Oklahoma, C. O. D. The first July 30, 1919, amounting to $163.95 and the other August 7, 1919, amounting to $2.58, which C. O. D. charges amounting to $166.53, this plaintiff paid; that said parts and repairs in no way fitted the said machine and were by plaintiff returned to the defendant on or about August 18, 1919, the defendant retaining the C. O. D. charges amounting to $166.53.

2. That at said time, plaintiff also sent to the defendant, one trunnion of the value of $20.00 pre-paying freight and drayage charges thereon in the sum of $3.00. That by reason of said facts, the defendant is justly indebted to plaintiff in the sum of One Hundred Eighty-Nine and 53/100 Dollars, for which he prays judgment with 6% interest from August 18, 1919.

THIRD CAUSE OF ACTION.

Plaintiff for his third cause of action re-states and re-pleads as part of this cause, all of the allegations set out in the above and foregoing statements of his first and second causes of action, and further states:

1. That during the threshing season of 1919, the plaintiff being the owner of a threshing machine outfit sold by defendant, ordered and purchased of defendant, certain parts and repairs for same, personally visiting the defendant's branch office at Wichita, Kansas, for that purpose on or about July 25, 1919; plaintiff at that time paid to said branch office, the sum of $10.00 to apply on the purchase price, the said parts and repairs to be shipped to plaintiff at Hobart, Oklahoma, C. O. D. with the balance of the purchase price to be collected in cash of plaintiff by the carrier, at the time of the delivery of the said shipment.

2. That notwithstanding the catalogue and invoice price of said parts and repairs so ordered and purchased amounted to but $38.50 and that plaintiff had already

paid thereon as a credit, the sum of $10.00, yet, said parts and repairs arrived at Hobart, Oklahoma, with C. O. D. charges amounting to $68.83, which this plaintiff paid; that of said parts and repairs same was returned to the amount of $20.50 at said catalogue and invoice price.

3. That by reason of the facts aforesaid, the defendant made and received an overcharge from plaintiff on said shipment of $60.83, which it now retains, to his damage in said sum.

Wherefore, he prays judgment.

FOURTH CAUSE OF ACTION.

Plaintiff for his fourth cause of action re-states and re-pleads as part of this cause, all of the allegations set out in the above and foregoing statements of his first, second and third causes of action, and further states:

1. That during the threshing season of 1919, the plaintiff being the owner of a threshing machine out-fit sold by defendant, and engaged in the neighborhood of Hobart, Oklahoma, operating the same in his contracts for threshing small grains at the usual and customary prices then and there prevailing, and being in need of parts and repairs for said threshing out-fit, ordered the same of defendant, who had exclusive sale of the said parts and repairs, and who through its offices and agents in charge of said sales and in filling said orders, had full knowledge of the model, size, number, kind and character of plaintiff's said machine, and knew that said parts and repairs were for this particular machine; that the defendant accepted said order and pretended to supply the proper and necessary parts and repairs, but instead of sending parts and repairs which would fit plaintiff's machine, and enable him to operate it and carry out his threshing contract with farmers in the neighborhood of Hobart, defendant purposely and fraudulently shipped parts and repairs to plaintiff with C. O. D. charges as set out in his second cause of action (which said second cause is hereby referred to and made a part of this, his fourth

cause of action), which parts and repairs the defendant, then and there well knew would not fit plaintiff's machine, nor be of any use or service to him whatsoever in the use and operation of same, but were shipped solely for the purpose of inducing plaintiff to pay the said C. O. D. charges, well knowing the said parts and repairs would by reason of misfit be returned, the defendant retaining such C. O. D. charges, claiming to credit the same on a false and pretended claim of indebtedness to defendant from plaintiff.

2. That plaintiff relied on the defendant's acceptance of the said order, and was not aware of the fact that said parts and repairs would not fit his machine, until after he had paid the said C. O. D. charges, received said parts and repairs and tried them on his said machine; that the threshing season was then on, and plaintiff had large and numerous contracts with divers and sundry farmers in the neighborhood of Hobart, Oklahoma, for the threshing of their grains at the usual and customary prices then and there prevailing, and had kept and maintained a fully equipped threshing crew at large expense for the operation of the said machine. That said threshing machine could not be operated by plaintiff without the repairs and parts so ordered; that by reason of the wrongful acts of the defendant in fraudulently shipping to plaintiff such mismatched parts and repairs, plaintiff was thereby prevented for a period of seven days during said threshing season of 1919 from pursuing his business of threshing to his damage in the sum of eleven hundred and seventy dollars, for which he prays judgment.

FIFTH CAUSE OF ACTION.

Plaintiff for his fifth cause of action re-states and re-pleads as part of this cause, all of the allegations set out in the above and foregoing statement of his first second, third and fourth causes of action and further states:

1. That during the threshing season of 1919, the plaintiff was engaged in the threshing of small grains in the neighborhood of Hobart, Oklahoma, using for that

purpose a threshing outfit sold by the defendant, who then and there had the exclusive sale of the parts and repairs for the said machine; that plaintiff had made contracts of and undertaken the work of threshing grain for divers and sundry farmers and persons in that neighborhood, to-wit:

_____ of _____ with _____bushels
_____ of _____ with _____bushels
_____ of _____ with _____bushels
_____ of _____ with _____bushels
_____ of _____ with _____bushels

and others too numerous to mention, at the usual and customary prices, then and there prevailing for such services. That such machine being in need of certain parts and repairs for which the defendant had exclusive sale, and was bound to sell to plaintiff at catalogue prices, said repairs were ordered by plaintiff of defendant, who accepted said order and pretended to ship the same, all as set out in plaintiff's second cause of action, which second cause is hereby referred to and the allegations thereof made a part of his fifth cause; that by reason of the wrongful and fraudulent acts of the defendant in purposely shipping the mismatched and non-fitting parts and repairs for said machine, thus delaying plaintiff in his threshing operations, he was unable to comply with his threshing contracts or perform the work of threshing the grain of the aforesaid farmers and persons within the threshing season of 1919; that his net profits in said contracts, had said contracts been performed, would have amounted to $2500.00; that by reason of the wrongful and fraudulent acts of the defendant, as aforesaid, this plaintiff was occasioned an actual loss in said sum of twenty-five hundred dollars, for which he prays judgment.

Wherefore, plaintiff prays judgment against the defendant in the sum of Four Thousand, Three Hundred Thirty-six and 50/100 Dollars, for his actual damages as set out in his first, second, third, fourth and fifth causes of action, together with six per cent per annum interest thereon from September 10, 1920, and for an

additional sum of Three Thousand Dollars, as punitive damages, and for the costs of suit.

(Signed) JOHN A. SCOTT,
Plaintiff.

(Signed.): CHAS. L. MOORE,
Attorney for Plaintiff.

EXHIBIT "A".

No. 636. (NOT NEGOTIABLE) St. Joseph, Mo., Aug. 26, 1893.

There will be due by Geo. O. Richardson Machy. Co. to Scott & Peshek the sum of *One Hundred and Eight* Dollars subject to the terms and conditions of the contract existing between the parties hereto at this date, payable on return of this certificate when note *No. 677 given by Joseph and F. R. Newark and Frank Worestek* to GEO. O. RICHARDSON MACHY. CO., dated June 19, 1893, due November 1, 1893, shall be collected by said GEO. O. RICHARDSON MACHY. CO.

This amount, however, to be chargeable with such proportion of the cost of collecting of said note, as its amount bears to principal of note, and in consideration therefor shall share in interest collected, in like proportion.

This certificate is given sole as evidence of the amount of Commission in the above described note, it being understood and agreed that, in case of failure of GEO. O. RICHARDSON MACHY. CO. to collect said note, this shall be null and void.

$108.00 GEO. O. RICHARDSON MACHINERY CO.
By Geo. O. Richardson, Gen. Manager.

Endorsed: Ok. City, O. T. 3/19/94 Pay to Order of John A. Scott.

M. PESHEK

(Endorsed on the back thereof as follows:)

No. 29,106. In the District Court of Oklahoma County, Oklahoma, John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a corporation, Defendant. Plaintiff's Petition and Exhibit "A". (92) (414) Filed in District Court, Oklahoma County, Oklahoma, Sept. 10, 1920. Cliff Myers, Court Clerk, by Wm. D. Thompson, Deputy. Charles L. Moore, Oklahoma City, Attorney for Plaintiff."

AND THEREAFTER: On the 10th day of September, 1920, there was filed in said cause, by the Court Clerk of said Court, a Praecipe for Summons; a full, true and correct copy of the same, together with all endorsements thereon, is in words and figures as follows, to-wit:

"PRAECIPE FOR SUMMONS.

State of Oklahoma, Oklahoma County, ss:

In the District Court of Oklahoma County.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a corporation, Defendant. Praecipe for Summons.

The Clerk of said Court will issue a summons in the above entitled cause, directed to the Sheriff of Oklahoma County, against the Defendant, to-wit: Geo. O. Richardson Machinery Company, a corporation, Home office at St. Joseph, Missouri, same to be served on the Secretary of State of the State of Oklahoma under Sec. 1339, Chap. 15, Art. 9, Okla. Revised Laws 1910, requiring said Defendant to answer on or before the 10th day of October, 1920, and returnable on the 20th day of September, 1920; and you will endorse thereon. Suit brought for the recovery of a money judgment and unless said Defendant answer, judgment will be taken for the sum of $4336.59, with interest at six per cent per annum from

the 10th day of September, 1920, and $3000.00 punitive damages.

Dated Sept. 10, 1920.

(Signed.): CHAS. L. MOORE,
Attorney for Plff.

(Endorsed on the back thereof, as follows.):

29,106, Praecipe for Summons, District Court, ... Plaintiff, vs. ..... Defendant. Iss. Filed in District Court, Oklahoma County, Oklahoma, Sep. 10, 1920, Cliff Myers, Court Clerk, By Dale Smith, Deputy."

AND THEREAFTER: On the 14th day of September, 1920, there was filed in said cause, by the Court Clerk of said Court, a summons; a full, true and correct copy of the same, together with all endorsements thereon, is in words and figures as follows, to wit:

"SUMMONS

State of Oklahoma, Oklahoma County, ss.

The State of Oklahoma to the Sheriff of Oklahoma County:

You are hereby commanded to notify Geo. O. Richardson Machinery Company, a corporation, Home Office at St. Joseph, Missouri, same to be served on the Secretary of the State of Oklahoma under Sec. 1339, Chap. 15, Art. 9, Okla. Revised Laws 1910 that it has been sued by John A. Scott in the District Court of Oklahoma County, State of Oklahoma, and that it must answer the petition of said Plaintiff John A. Scott filed against it in the Clerk's office of said Court, on or before the 10th day of October, 1920, or said petition will be taken as true and judgment rendered accordingly.

You will make due return of this Summons on or before the 20th day of September, 1920.

Given under my hand and the Seal of said Court this 10th day of September, 1920.

(Signed.): Cliff Myers, Court Clerk,
(SEAL.) By Dale Smith, Deputy.

(Endorsed on the back thereof, as follows.):

Suit brought for the recovery of a money judgment. If the defendant fail to answer, judgment will be taken for the sum of $4336.59, with interest at the rate of six per cent per annum from the 10th day of September, 1920, and costs of suit, and $30.00.00 punitive damages.

(Signed.): Cliff Myers, Court Clerk,
Dale Smith, Deputy.

I received the above summons on 14 - Sept. 1920, and executed the same in my county by Delivering a true copy of this Summons, with the endorsements thereon to the within named defendant Geo. O. Richardson Machinery Co., a corporation, by delivering copy on J. S. Morris, Sec. State of Okla., said Corp. not having a designated service agent for service of this kind.

(Signed.): J. E. Johnson,
Sheriff of said County,
By Jim Carter, Deputy.

Carter.

No. 29,106. Summons. Jno. A. Scott, Plaintiff, vs. Geo. O. Richardson Mch. Co., Defendant. Issued 10 Sept., 1920, Returnable 20 Sept., 1920, Answer Due 10 Oct., 1920. Chas. L. Moore, Attorney for Plaintiff.

Filed in District Court, Oklahoma County, Oklahoma, Sep. 14, 1920, Cliff Myers, Court Clerk, By Dale Smith, Deputy.

Sheriff's fees:

Serving Subpoena, first person,	$ .50
..... additional persons,	$
1 copy of Subpoena,	$ .25
..... not found,	$

Mileage 6 miles,	$ .60
Total,	$1.35

(Signed.): G. E. Johnson,
Sheriff,

By Jim Carter,
Deputy."

AND THEREAFTER: On the 23rd day of October, 1920, there was entered in said cause and recorded by the Court Clerk of said Court, on the Minutes of said Court, a certain Order as to proceedings had therein; a full, true and correct copy of said Minutes, together with that part pertaining to this case, is in words and figures a follows, to-wit:

JAMES I. PHELPS, *Judge*.

October 23rd, 1920.

BE IT REMEMBERED: That on the 23rd day of October, 1920, same being a regular day of the September term 1920 of the District Court of Oklahoma County, State of Oklahoma, court convened pursuant to adjournment with the following officers present: James I. Phelps, Judge; Cliff Myers, Court Clerk; Wm. D. Thompson, Deputy; O. E. Cargill, County Attorney; Wm. D. Thompson, Deputy; G. E. Johnson, Sheriff; M. E. Fullenwider, Official Stenographer; W. F. Jones, Bailiff. Public proclamation of the opening of this court having been duly ordered, the following proceedings were had:

* * * * * * * * * *...

Scott vs. Richardson Machinery Co., 29,106

At this time, this case was called and defendant adjudged in default. Case comes on for trial. Four witnesses sworn. Judgment for plaintiff as per Journal Entry.

* * * * * * * * * *

AND THEREAFTER: On the 28th day of October, 1920, there was filed in said cause, by the Court Clerk of said Court, a Journal Entry; a full, true and correct copy of the same, together with all endorsements thereon, is in words and figures as follows, to-wit:

"In the District Court of Oklahoma County, in the State of Oklahoma.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a corporation, Defendant. No. 29,106.

JOURNAL ENTRY.

Now, on this twenty-third day of October, 1920, the same being a regular judicial day of this court, this cause coming on to be heard upon plaintiff's petition herein, the plaintiff appeared in person and by his attorney, Chas. L. Moore, and the defendant although thrice solemnly called, came not, and it appearing to the court from the Sheriff's return of the summons herein, issued on September 10, 1920, that the same was served on September 14, 1920, by the delivery of a true copy of said summons with all endorsements thereon, by the Sheriff of Oklahoma County, Oklahoma, to Hon. J. S. Morris, in the said county, he, the said J. S. Morris, then and there being the regularly elected, qualified and acting Secretary of State of the State of Oklahoma, as such constituted by Section 1339, Article 9 of the Revised Laws of Oklahoma, 1910, then in force, as process agent for the defendant, in the absence of an appointment by defendant of other process agent for the service of said summons, filed in the office of the said Secretary of State; and from other evidence offered and received, the Court further finds that at the time of the institution of this action, to-wit: On September 10, 1920, the said defendant was and had for a long time prior thereto, been engaged in the general business within the State of Oklahoma of keeping and selling within the said State, threshing machinery and parts and repairs therefor, and of maintaining places of business for the delivery of same, constituting domestic intrastate commerce therein, thereby

authorizing the plaintiff to institute suit and secure service in the manner aforesaid.

The court further finds that such service is in all respects, as to give jurisdiction to render a money judgment in personam against the defendant, and such service is hereby approved, and it further appearing that the defendant is now in default of demurrer, answer, or other plea, judgment of default is now hereby rendered against the said defendant.

Thereupon, the plaintiff announced ready for trial, waived a jury, introduced his evidence, and rested as to the second, third, fourth and fifth causes of action set up in his petition, from which the court now finds that there is justly due plaintiff from the defendant, the Geo. O. Richardson Machinery Company, a foreign corporation, with Home Office and principal place of business, at the city of St. Joseph, in the county of Buchanan and State of Missouri, after allowing all just credits and setoffs, as follows:

On plaintiff's second cause of action, the sum of One Hundred Eighty-Nine and 53/100 Dollars; on the third cause of action, the sum of Sixty and 83/100 Dollars; on the fourth cause of action, the sum of eleven hundred and seventy dollars; and on the fifth cause of action, the sum of twenty-five hundred dollars, together with six per centum per annum interest on each of the above named sums from September 10, 1920.

The Court further finds that the plaintiff is not entitled to punitive damages as prayed in his petition, and all punitive damages are hereby disallowed; the Court finds that the plaintiff should be allowed further time, in which to make proof of the payment of the note referred to in his first cause of action.

It is therefore by the Court, hereby considered, ordered, adjudged and decreed that plaintiff have and recover of and from the defendant, Geo. O. Richardson Machinery Company, a corporation, the sum of Three Thou-

sand, Nine Hundred Forty-Eight and 45/100 Dollars, found due on the second, third, fourth and fifth causes of action aforesaid, with six per cent interest per annum from this date, and for costs of suit, and that judgment as to plaintiff's first cause of action shall be held in abeyance, until the further order of the court.

O. K. (Signed) Chas. L. Moore,
Atty. for Plff.

(Signed) JAMES I. PHELPS,
Judge District Court.

(Endorsed on the back thereof, as follows.):

No. 29,106. Chg. John A. Scott, Plff. vs. Geo. O. Richardson Machinery Company, a corporation, Deft. Journal Entry. Filed in District Court, Oklahoma County, Oklahoma, Oct. 28, 1920, Cliff Myers, Court Clerk, By Cliff Myers. Recorded, proof read, Book 73, Page 791."

AND THEREAFTER: On the 25th day of April, 1921, there was filed in said cause, by the Court Clerk of said Court, a Dismissal of First Count; a full, true and correct copy of the same, together with all endorsements thereon, is in words and figures as follows, to-wit:

In the District Court of Oklahoma County, State of Oklahoma.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a corporation, Defendant. No. 29,106.

DISMISSAL OF FIRST COUNT.

Comes now John A. Scott, plaintiff in the above numbered and entitled cause and hereby freely and voluntarily dismisses the cause of action set up in the First Count of his petition therein, same to be without prejudice.

John A. Scott, Pltff.
By Chas. L. Moore, His Atty.

(Endorsements)

No. 29,106. Dist Court, Oklahoma Co. Okla. John A. Scott vs. Geo. O. Richardson, a corporation, Deft. Dismissal by Plff 1st Count of Petition Filed in District Court, Oklahoma County, Oklahoma, Apr. 25, 1921, Cliff Myers, Court Clerk, Dale Smith, Deputy.

AND THEREAFTER: On the 14th day of July, 1921, there was filed in said cause, by the Court Clerk of said Court, a Special Appearance and Motion to Quash Summons and Service thereof and to set aside and vacate Judgment; a full, true and correct copy of the same, together with all endorsements thereon, is in words and figures as follows, to wit:

In the District Court of Oklahoma County, State of Oklahoma.

John A. Scott, Plaintiff, vs. George O. Richardson Machinery Company, a corporation, Defendant. No. 29,106.

SPECIAL APPEARANCE AND MOTION TO QUASH SUMMONS AND SERVICE THEREOF, AND TO SET ASIDE AND VACATE JUDGMENT.

Comes now the defendant George O. Richardson Machinery Company, a corporation, and appearing specially, for the purpose of this motion, and for no other purpose, shows to the court that it is a Missouri corporation, not engaged in business, nor doing business within the State of Oklahoma, and that heretofore, to wit, on the 23rd day of October, 1920, by consideration of this Court, the plaintiff recovered a judgment against this defendant by default, in the absence of this defendant, and without any notice to the defendant other than is indicated by the sheriff's return of service of summons hereon, a copy of which said summons and return is hereto attached, made a part of this motion, and marked Exhibit A. Service of said summons was had upon the Secretary of State of the State of Oklahoma, and upon no other person.

That the defendant neither had nor received any no-

tice of the pendency of the said suit, nor of the rendition of the said judgment until about the 1st day of July, 1921, when it learned that a judgment had been rendered in the said action, and for said reason had no opportunity to appear and plead or defend as now set out herein, or in any other manner, although defendant alleges that he had and has a valid defense to the causes of action set out in plaintiff's petition, in that the allegations of plaintiff's petition are false, and the defendant is not indebted to the plaintiff in any sum whatever.

That the defendant was not at the date of the institution of said suit, and is not now, engaged in nor doing business within the State of Oklahoma, and was not a resident of said state, but is incorporated under the laws of the State of Oklahoma, and does a purely interstate business with the residents of Oklahoma; and the Secretary of State of Oklahoma was not then, and is not now, the agent of the defendant company, or an officer thereof, nor authorized by contract or law to be served on behalf of the defendant, and that said summons and service thereof no jurisdiction of the defendant on this Court.

That defendant believes that said summons and the service thereof was by virtue of Section 1339 of the Revised Laws of Oklahoma of 1910, authorizing service of summons upon the Secretary of State of Oklahoma where suit is against a non-resident corporation of the State of Oklahoma, doing business within said state, in the event the said corporation has not appointed an agent for service as provided by the laws of the said State. And defendant says that said section of the laws of Oklahoma, so providing, is to that extent in conflict with the Constitution of the United States, and particularly with the 14th Amendment thereto, in that the said section does not provide for the giving of notice to such corporations by the said Secretary of State and for said reason, and for other reasons, does not comport with the said amendment, and seeks to deprive this defendant, or such persons or corporations as it may refer to, of property without due process of law; and that said section is void and inoperative,

and service had thereunder does not give the courts of Oklahoma jurisdiction of this defendant, or of any corporation non-resident within the said state, whether engaged in doing business within the state or not.

Wherefore, defendant enters its special appearance for the sole purpose of presenting this motion, and moves that the summons and the purported return of service thereon be quashed, and that the judgment rendered thereunder without jurisdiction be set aside and vacated, and that no further proceedings be had herein.

(Signed) D. H. LINEBAUGH,
PAUL PINSON,
Attorneys for Defendant.

State of Missouri, County of Buchanan, ss.

John R. Myers, the undersigned, being first duly sworn on oath, states that he is the president of the George O. Richardson Machinery Company, and is 44 years of age and a citizen and resident of the State of Missouri, with his postoffice address at St. Joseph, in said State.

Affiant further states that the George O. Richardson Machinery Company is a corporation, duly organized, existing and operating under the laws of the State of Missouri, for the purposes for which it was incorporated, to wit, the sale and distribution of machinery of various kinds and types.

That ever since its incorporation the said company has had its principal office and place of business in the City of St. Joseph, in the State of Missouri, and it has never at any time had any office or place of business within the State of Oklahoma, or any part thereof; that it has never had agents or officers, or branch offices within the State of Oklahoma, and owns no real property within said State, and owns no personal property, save and except as its interest may appear in certain personal property consigned to Oklahoma individuals, firms and corporations; that upon occasions the said company has so consigned personal property, to wit, machinery owned by it, to such

individuals, firms, partnerships and corporations within the State of Oklahoma, retaining title thereto until the said machinery was sold and remittance of the proceeds made under contracts with the said Oklahoma concerns executed in Missouri with the said company, all shipments thereof and transactions connected therewith being transactions purely in interstate commerce, and that said George O. Richardson Machinery Company has not at any time engaged in the carrying on of business within the State of Oklahoma, and does not now carry on business or do business within said State within the meaning of the Oklahoma Statutes providing for the appointment of an agent for service therein.

That heretofore, to wit, on the *23rd* day of October, 1920, a judgment was rendered against the George O. Richardson Machinery Company in the District Court of Oklahoma County, State of Oklahoma, in an action filed by John A. Scott against the said company, the summons therein being served as now appears from the record, upon the Secretary of State for the State of Oklahoma.

That neither the president of this company, nor any of its chief officers nor any director of the company, so far as this affiant is advised, ever had any notice or information that such suit was pending until long after judgment was rendered therein, and on or about the first day of July, 1921, when the said company was advised of the existence of such suit and such judgment, and did not know the nature of the action of the amount of the judgment or the date, or where or when the suit was brought until on or about the first day of July, 1921, and immediately upon learning that such judgment had been rendered, and that such suit was pending, it caused counsel to be advised in the City of Muskogee, State of Oklahoma, who immediately investigated and informed the company of the existence and pendency of such action, and notified them of the claim of plaintiff of the allegations of the plaintiff, and the nature and amount of the judgment.

Further affiant says that the claim of the plaintiff is

wholly without foundation and false, and that the defendant George O. Richardson Machinery Company has a just and meritorious defense, valid and legal, to the claim of the said plaintiff, in that the various causes of action alleged against this defendant are false and without basis, and upon advice of counsel affiant believes that said plaintiff could not recover in said action, save and except as in the present case where judgment was taken in the absence of the defendant, and without its knowledge.

That no summons in said action was served upon the president or on the said defendant corporation, or any of its officers and agents, and that the Secretary of State for the State of Oklahoma, upon whom service of summons was attempted to be had in this action, was not the agent of the defendant corporation, nor in any way connected therewith, and that the summons was not served in this action, as contemplated by the statutes of the State of Oklahoma, for the reason that the corporation defendant herein, was not at the date of the institution of said suit, and never since said time, nor before said time, has been engaged and doing business within the State of Oklahoma, nor maintained any office, officers or agents therein.

Dated this the 11th day of July, 1921.

(Signed) JNO. R. MYERS.

Subscribed and sworn to before me this the 11th day of July, 1921.

(Signed) WATIES L. MIMS, JR.,
(Seal) Notary Public.

My Commission expires April 25, 1923.

Endorsement as follows:

No. 29,106. In the District Court, Oklahoma County, Oklahoma, Scott vs. Geo. O. Richardson Mchy. Co. Special appearance and motion to quash service and vacate judgment. Filed in District Court, Oklahoma County, Ok-

lahoma. Jul 14 1921 Cliff Myers, Court Clerk. By Dale Smith, Deputy.

AND THEREAFTER: On the 14th day of July, 1921, there was filed in said cause by the Court Clerk of said Court a Notice of Petition and Bond for Order of Removal; a full, true and correct copy of the same, together with all endorsements thereon, is in words and figures as follows, to wit:

NOTE BY REPORTER: Notice of Petition and Bond for order of removal being filed on the 14th day of July, 1921, having been offered in evidence on behalf of the plaintiff and having been received in evidence by the Court at this time, over the objections and exceptions of the defendant; a full, true and correct copy of said instrument, together with all endorsements thereon, being in words and figures as follows, to wit:

In the District Court of Oklahoma County, State of Oklahoma. John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a corporation, Defendant. No. 29,106.

NOTICE OF PETITION AND BOND FOR ORDER OF REMOVAL.

To John A. Scott, plaintiff, and Charles L. Moore, his attorney of record:

Please take notice that the defendant, Geo. O. Richardson Machinery Company will on Thursday, July 14th, 1921, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, move the court for an order removing the above entitled cause to the District Court of the United States for the Western District of Oklahoma, in accordance with the petition and bond of defendant copies of which are hereto attached.

Dated this 8th day of July, 1921.

(Signed) D. H. LINEBAUGH,
PAUL PINSON,
Attorneys for Defendant.

Service accepted this the 9th day of July, 1921.

(Signed) B. T. HAINER and
CHAS. L. MOORE,
Attorneys for Plaintiff.

Endorsements as follows:

No. 29,106. In the District Court of Oklahoma County, State of Oklahoma. John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a corporation, Defendant. Notice of petition and bond for order of removal. Filed in District Court, Oklahoma County, Oklahoma. Jul 14 1921 Cliff Myers, Court Clerk. By Dale Smith, Deputy.

AND THEREAFTER: On the 14th day of July, 1921, there was filed in said cause by the Court Clerk of said Court a Bond for Removal; a full, true and correct copy of the same, together with all endorsements thereon, is in words and figures as follows, to wit:

In the District Court within and for Oklahoma County, State of Oklahoma.

John A. Scott, Plaintiff, vs. George O. Richardson Machinery Company, a corporation, Defendant. No. 29,106.

BOND.

Know All Men By These Presents: That the George O. Richardson Machinery Company, as Principal, and the United States Fidelity & Guaranty Company, as Surety, hereby acknowledge themselves indebted to the plaintiff John A. Scott in the full and just sum of Five Hundred ($500.00) Dollars, for the payment of which well and truly to be made, they bind themselves and their successors and assigns firmly by these presents.

The conditions of this obligation are as follows:

Whereas, the defendant, George O. Richardson Machinery Company, has applied by petition to the District

Court within and for Oklahoma County, State of Oklahoma, for the removal of a certain case pending in said Court, wherein John A. Scott is plaintiff and George O. Richardson Machinery Company is defendant, to the District Court of the United States for the Western District of Oklahoma, sitting at Guthrie, Oklahoma, for further proceedings on the grounds in said petition set forth, and that all further proceedings in said action in said District Court for Oklahoma County, State of Oklahoma, be stayed.

Now, Therefore, if said defendant, the said George O. Richardson Machinery Company, shall enter in the District Court of the United States for the Western District of the State of Oklahoma, sitting at Guthrie, Oklahoma, as aforesaid, within thirty days from the date of filing his petition for removal herein, a certified copy of the record in said suit, and shall pay or cause to be paid all costs that may be awarded by said District Court of the United States if said Court shall hold that said suit was wrongfully and improperly removed thereto, then this obligation to be void; otherwise to remain in full force and effect.

Dated this 14th day of July, 1921.

(Signed) George O. Richardson Mch. Co.,
By D. H. LINEBAUGH, Atty.

United States Fidelity and Guaranty Company.
By ANCELL EARP.
(Seal) Its Attorney in Fact.

Approved this 14 day of July, 1921.

(Signed) Cliff Myers, Court Clerk.
(Seal) By Dale Smith, Dep.

Endorsements thereon as follows:
Filed in District Court, Oklahoma County, Oklahoma,

Jul 14 1921 Cliff Myers, Court Clerk. By Dale Smith, Deputy.

AND THEREAFTER: On the 14th day of July, 1921, there was filed in said cause by the Court Clerk of said Court a Petition for Removal; a full, true and correct copy of the same, together with all endorsements thereon, is in words and figures as follows, to wit:

In the District Court of Oklahoma County, State of Oklahoma.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a Corporation, Defendant. No. 29,106.

PETITION FOR REMOVAL.

Your petitioner respectfully shows to this Honorable Court that the matter and amount in dispute in the above entitled suit exceeds the sum or value of Three Thousand Dollars ($3000.00), exclusive of interest and costs. That the controversy in said suit is, and at the time of the commencement of this suit, was between citizens of different states, and that your petitioner, the defendant in the above entitled suit, was at the time of the commencement of the suit, and still is, a resident of and a citizen of the city of Saint Joseph, in the State of Missouri, and is incorporated under the laws of the State of Missouri, and is a non-resident of the State of Oklahoma, and that the plaintiff was then, and still is, a resident and citizen of the County of Oklahoma, and of the State of Oklahoma.

Your petitioner offers herewith a good and sufficient bond for its entering in the District Court of the United States for the Western District of the State of Oklahoma, on the first day of its next term, a copy of the record in this suit, and for paying all costs that may be awarded by the said District Court, if said court shall hold that this suit was wrongfully or improperly removed thereto.

And he prays this Honorable Court to proceed no further herein except to make the order of removal re-

quired by law, and to accept the said surety and bond, and cause the record herein to be removed into said District Court of the United States for the Western District of Oklahoma, and he will ever pray.

GEO. O. RICHARDSON
MACHINERY CO.,
Defendant.

By
(Signed) D. H. LINEBAUGH,
PAUL PINSON,
His Attorneys.

State of Missouri, County of Buchanan, ss.

John R. Myers, being first duly sworn, upon oath states that he is the President and Treasurer of the Geo. O. Richardson Machinery Company, a Missouri Corporation, the defendant and petitioner above named; that he is familiar with the allegations of the above petition, and knows the contents thereof, and that the statements therein set forth are true and correct.

(Signed) JNO. R. MYERS.

Subscribed and sworn to before me, this 11th day of July, 1921.

(Signed) WATIES L. MIMS, JR.,
(Seal) Notary Public.

My Commission expires April 25, 1923.

Endorsements as follows:

No. 29,106. In District Court, Oklahoma County, Oklahoma. Scott v. Geo. O. Richardson Machinery Co. Petition for Removal filed in District Court, Oklahoma County, Oklahoma, Jul 14 1921. Cliff Myers, Court Clerk, by Dale Smith, Deputy.

AND THEREAFTER: On the 14th day of July, 1921, there was filed in said cause, by the Court Clerk of said

Court, an Order of Removal; a full, true and correct copy of the same, together with all endorsements thereon, is in words and figures as follows, to wit:

In the District Court of Oklahoma County, State of Oklahoma.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a Corporation, Defendant. No. 29,106

ORDER OF REMOVAL.

This cause coming on for hearing on petition and bond of the defendant for an order transferring this cause to the United States Court for the Western District of Oklahoma, and it appearing to the court that the defendant has filed his petition for such removal in due form of law, and that the defendant has filed his bond duly conditioned, with good and sufficient surety, as provided by law, and that defendant has given plaintiff due and legal notice thereof, and it appearing to the court that this a proper cause for removal to said District Court;

Now therefore said petition and bond are accepted hereby, and it is hereby ordered and adjudged that this cause be and it is hereby removed to the United States Court for the Western District of the State of Oklahoma, and the clerk is hereby directed to make up the record in this cause for transmission to said court forthwith, to which plaintiff objects and excepts.

Done in open court, this the 14 day of July, 1921.

(Signed) GEO. W. CLARK,
Judge

Endorsements as follows:

In the District Court of Oklahoma County, Oklahoma. Scott vs. Geo. O. Richardson Mchy. Co. Order of Removal. Filed in District Court, Oklahoma County, Oklahoma, Jul 14 1921. Cliff Myers, Court Clerk, by Wm. D. Heapin, Deputy. No. 29,106.

AND THEREAFTER: On the 8th day of May, 1922,

there was filed in said cause, by the Court Clerk of said Court, a Journal Entry, remanding cause; a full, true and correct copy of the same, together with all endorsements thereon, is in words and figures as follows, to wit:

In the District Court of the United States for the Western District of Oklahoma.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a Corporation, Defendant. At Law, No. 2159.

JOURNAL ENTRY.

On this 27th day of April, 1922, the motion of the plaintiff for a modification of the order of this Court made and entered of date March 11, 1922, comes on to be heard, and is duly argued and submitted, and this Court being fully advised, it is hereby ordered that said Order of March 11, 1922, be modified so as to read as follows, to wit:

In the District Court of the United States for the Western District of Oklahoma.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a Corporation, Defendant. At Law. No. 2159.

JOURNAL ENTRY.

On March 7, 1922, the said cause having been heard upon the motion of defendant to quash the service of summons and vacate the judgment herein, the plaintiff appearing by his attorneys, Charles L. Moore and Everest, Vaught & Brewer, and the defendant appearing by its attorney, Linebaugh & Pinson, and the evidence and showing of the said parties having been submitted upon said motion and the same having been duly argued and considered and now coming on for determination on this 11th day of March, 1922, the Court finds that the said defendant was at the date of service of summons herein a foreign corporation doing business in the State of Oklahoma; that it had not at that time appointed and designated an agent for the acceptance of service of process upon it

within the State of Oklahoma; that the service of summons in said cause was duly had upon the Secretary of State of Oklahoma, as required and provided by statute of the said State; and that said statute is constitutional and valid.

It is, therefore, by this Court considered, ordered and adjudged that the petition for removal of this cause from the District Court of Oklahoma County, Oklahoma, was not filed within the time required by law, and that for such cause the former order of this Court overruling plaintiff's motion to remand this cause be, and it is hereby vacated and set aside, and that this cause be and the same is hereby remanded to the District Court of Oklahoma County, State of Oklahoma; and that the costs of said cause in this Court be, and the same are taxed to the defendant, for which execution is directed to issue.

To which findings, and each of them, and said judgment and decree, and every part thereof, the said defendant at the time duly excepted and now excepts, and said defendant is allowed sixty days within which to present and file a bill of exceptions herein.

JOHN H. COTTERAL,
Judge.

Endorsed: Filed Apl. 27, 1922. Arnold C. Dolde, Clerk.

United States of America, Western District of Oklahoma, ss.

I, Arnold C. Dolde, Clerk of the District Court of the United States for the Western District of Oklahoma, do hereby certify the within and foregoing to be a full, true and complete copy of the original order remanding cause to State Court in said cause as the same appears on file and of record in my office.

Witness my hand and the seal of said Court, at office in the City of Guthrie in said District, this 6th day of May, 1922.

ARNOLD C. DOLDE, Clerk.
(Seal) By M. V. HAWS, Deputy Clerk

Endorsements as follows:

No. 29,106. In the District Court of Oklahoma County, State of Oklahoma. John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a Corporation, Defendant. Certified copy of Order of District Court of the United States, Western District of Oklahoma, remanding cause to District Court of Oklahoma County, Oklahoma. Filed in District Court, Oklahoma County, Oklahoma, May 8 1922 Cliff Myers, Court Clerk. By Cliff Myers. Recorded, Proof read Page 379 Book 92 78

AND THEREAFTER: On the 1st day of June, 1922, there was filed in said cause, by the Court Court of said Court, a Petition to Vacate Judgment; a full, true and correct copy of the same, together with all endorsements thereon, is in words and figures as follows, to wit:

"State of Oklahoma, Oklahoma County. In the District Court.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a Corporation, Defendant. No. 29,106.

PETITION TO VACATE JUDGMENT.

Comes now the defendant, Geo. O. Richardson Machinery Company, a corporation, and shows to the Court:

(1) That the plaintiff, John A. Scott, is a citizen and resident of Oklahoma County, State of Oklahoma, and that heretofore, to wit: On the 23rd day of October, 1920, the said John A. Scott recovered in this cause a judgment against this defendant by default, in the absence of this defendant, which judgment was for the principal sum of Three Thousand, Nine Hundred Forty-Eight Dollars and Forty-Five Cents ($3,948.45).

(2) That service of summons in said cause was had by serving the Secretary of State of the State of Oklahoma, and in no other manner, as shown by the files in this cause and the records; and your defendant never had any notice or opportunity to appear and defend such action and was unaware that any actions were pending and

was unaware that any judgment had been rendered until the month of July, 1921. That defendant furthermore never had any notice of any kind or character of the pendency of said action or that the plaintiff made any claim whatsoever of any indebtedness due him from the defendant company.

(3) That the Secretary of State of the State of Oklahoma is in no wise, either personally or officially, a legal representative of the defendant, and was not at the time of the service of summons upon him, and never has been, an agent or otherwise connected with the defendant company.

(4) That the hearing had on the said 23rd day of October, 1920, the date of the rendition of said judgment, was wholly perfunctory and *ex parte*, and that your defendant had no opportunity to appear and be heard in its own defense.

(5) That the service had was based upon an allegation fraudulently made in the petition of the plaintiff that this defendant, Geo. O. Richardson Machinery Company, is and was a corporation engaged in and doing business within the State of Oklahoma within the meaning of the laws of Oklahoma relative to service upon foreign corporations, and that the judgment was rendered upon false and fraudulent testimony of the plaintiff herein given to support the allegations of his petition at a time when the said plaintiff knew, and was advised that the defendant company was in no wise indebted to him, but that, on the other hand, the plaintiff was indebted to the defendant company in the sum of Twenty-Nine Dollars Ten Cents ($29.10).

(6) Your defendant further avers that it was not at the dates of the rendition of the judgment herein, nor at any time prior thereto, doing business within the State of Oklahoma within the meaning of the Oklahoma laws relative to service; and for that reason, had never appointed an agent for service within the State of Oklahoma, and was not entitled to be served by summons de-

livered to the Secretary of State of the State of Oklahoma.

(7) That it was never defendant's intention to violate any of the laws of the State of Oklahoma; and, if it unconsciously transacted business within the State of Oklahoma which was not interstate commerce but was business capable of being controlled by the state laws, and if, in truth and in fact, the defendant was, as a matter of law, at the time of the rendition of said judgment or theretofore engaged in doing business within the State of Oklahoma, it was not so advised, and it now denies that it was so engaged. But defendant avers that, irrespective of the question whether it was or was not doing business within the state, it was entitled to be heard and entitled to be notified of the pendency of such proceedings. That the plaintiff, by fraud, failed and refused ever to notify or advise this defendant that he had any claim against it, and fraudulently concealed from it, the institution of such suit; and that there was no duty devolving upon the Secretary of State of the State of Oklahoma, either by law or by any relation between the said Secretary of State and this defendant, to disclose to this defendant that summons had been served upon him.

(8) Your defendant further avers that it has been at all times, and is now, engaged solely in the business of interstate commerce, selling certain articles through salesmen to citizens and residents of the State of Oklahoma, and that the said service upon it is wholly invalid and irregular, and that the Court acquired no jurisdiction to render judgment against this defendant.

(9) The defendant has a good and meritorious defense to each and every part of the plaintiff's alleged cause of action, and, if permitted to appear and answer herein, it could establish the facts as set out in Exhibit "A," made a part of this petition, being an answer fully verified, which answer will be filed in this cause if this petition shall be granted. And this defendant alleges that had it known or had any intimation of the pendency

of the action herein, it would have appeared and defended as it now appears and defends; and that the rendition of such judgment, without any kind or character of notice to this defendant, is a violation of its constitutional rights and is a great misfortune unavoidable by this defendant which prevented this defendant from introducing its defense at the time the cause was tried.

(10) Your defendant further alleges that certain proceedings are now pending for the enforcement of this judgment, to wit: A certain levy upon personal property of this defendant found within the County of Muskogee and State of Oklahoma, and that the Sheriff of Muskogee County is threatening to sell said property, and that this Court should not permit the rights of this defendant to be prejudiced by the sale of said personal property pending hearing on this petition; and defendant herein tenders a good and sufficient bond to the plaintiff in such sum as the Court may fix, conditioned that it will pay to the plaintiff any damages that may be caused by granting an order suspending proceedings herein until the final determination of this petition.

WHEREFORE, defendant prays that the Court enter its order suspending proceedings on the judgment herein and specifically directing the withdrawal of the personal property in Muskogee County, Oklahoma, from sale pending the hearing on this petition; and that, upon a final hearing of this petition, the Court set aside and vacate the judgment herein made the 23rd day of October, 1920, and permit this defendant to file the answer hereto attached and make its just and proper defense in this cause; and that it have all other proper and equitable relief.

(Signed) LINEBAUGH and PINSON,
Attorneys for Defendant.

State of Oklahoma, County of Muskogee, ss.

I. D. H. Linebaugh, a member of the firm of Linebaugh and Pinson, attorneys for the Geo. O. Richardson

Machinery Company, a corporation, defendant herein and petitioner, state upon oath that the defendant and petitioner, Geo. O. Richardson Machinery Company, is a corporation organized under the laws of the State of Missouri, with its office and principal place of business at St. Joseph, Missouri, and is not a resident of Oklahoma County, Oklahoma; and, by reason thereof, I make this affidavit on its behalf and state that the facts set forth in the petition to vacate judgment are true and correct.

(Signed) D. H. LINEBAUGH.

Subscribed and sworn to before me this the 16th day of May, 1922. (Signed) MARY TINGLE,
(Seal) Notary Public.

My Commission expires September 29, 1925.

EXHIBIT "A".

State of Oklahoma, Oklahoma County. In the District Court.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a corporation, Defendant. No. 29,106.

ANSWER.

Comes now the defendant, and, for its answer to the petition of the plaintiff, denies each and every allegation in its first, second, third, fourth and fifth causes of action contained.

Further answering herein, defendant specifically denies each and every allegation in the first cause of action herein contained, but admits that the defendant is a foreign corporation duly organized and existing under the laws of the State of Missouri, having its home office and principal place of business in the City of Saint Joseph, Missouri, and that it is and has been engaged in the business of selling machinery since the year 1914, at which time said company was organized. Defendant denies that it is doing business within the State of Oklahoma, but alleges that it is engaged in the business of purely interstate commerce among the states of Missouri and Kansas

on the one hand and Oklahoma and Arkansas and other states on the other hand, transacting business with the citizens of said states through salesmen or representatives; that it maintains no regular places of business within any other states than those of Kansas and Missouri, and that the transaction of its business with the citizens of other states has been solely by means of representatives soliciting business for the defendant and by means of the United States mail and interstate railroads.

Further answering herein, defendant specifically denies that it ever issued to Scott and Peshek its commission certificate in the sum of One Hundred Eight ($108.00) as alleged, but alleges the fact to be that the defendant herein was not organized until the year 1914 or approximately twenty-one (21) years after the execution of the commission certificate, as aforesaid, and the alleged payment of said commission certificate. Defendant further alleges that said certificate against note number 677 of Joseph Novak, F. R. Novak and Frank Worestek was never collected, but that foreclosure proceedings were instituted; and, on October 29,1894, upon the sale of the property given as security for the said note, there was realized the sum of One Hundred Thirty-Eight Dollars and Fifty Cents ($138.50); that there had theretofore been collected the sum of Ninety Dollars ($90.00) or a total of Two Hundred Twenty-eight Dollars Fifty Cents ($228.50), and that no other payment or collection of any kind or character has ever been received. That in 1896, the said note, together with two additional notes, were reduced to judgment, and that the said judgment appears in the records of Oklahoma County, Oklahoma, at this date, unsatisfied. Your defendant, further answering, says that the Geo. O. Richardson Machinery Company, the corporation which executed the said commission certificate to the said Scott and Peshek, by virtue of which the plaintiff claims under his first cause of action, ceased its legal existence in the year 1912 by virtue of the fact that its period of corporate entity then and there expired, and that the present Geo.

O. Richardson Machinery Company, defendant herein, is not the maker of said commission certificate, nor in any wise interested therein, nor liable thereon.

Wherefore, defendant prays that plaintiff take nothing by his first cause of action.

ANSWER TO SECOND CAUSE OF ACTION.

The defendant further answering the petition of the plaintiff, and with special reference to the second cause of action, reiterates the allegations of its answer, as hereinabove set out, to the first cause of action, and further denies each and every allegation thereof; but the defendant admits that on July 27, 1919, the plaintiff ordered by telegram "high pressure cylinder and engine bed combined, engine number 11828", and on July 28, 1919, ordered by telegram "one Reticence". That by the said Reticence, the plaintiff intended to order one D-2518 intermediate gear trunion of the value of Twenty Dollars ($20.00), and by the first telegram, aforesaid, the plaintiff intended to order, and the defendant so understood, cylinder and engine bed with letter and symbol D-2624. That on July 28, 1919, both of said orders were filled by this defendant with instructions to the express company to collect on delivery One Hundred Forty-five Dollars ($145.00). On July 30, 1919, telegraphic order from the plaintiff was received indicating the acceptance of the cylinder and ordering 6 ½ by 10 engine number 11828, which telegram was supplemented by a telegram of July 31, 1919, indicating that the engine was a twenty horsepower engine, and thereupon defendant shipped by express one D-2625 engine bed and cylinder for 6 ½ by 10 by 10 engine, price One Hundred Thirty Dollars ($130.00), and one D-2707 intermediate gear trunion for the same sized engine, priced at Twenty Dollars ($20.00) defendant knowing that the former trunion shipped would be incorrect for the larger engine. Thereafter, on September 8, 1919, the first engine bed and cylinder were returned, also the first trunion and the second trunion, being of the total value of One Hundred Sixty-five Dollars ($165.00), and thereupon the

defendant gave credit to the account of the said John A. Scott for One Hundred Fifty-three Dollars Fifty Cents ($153.50), being the said sum of One Hundred Sixty-five Dollars ($165.00) less freight and drayage of Eleven Dollars Fifty Cents ($11.50) on the return shipment. The credit thus given to the account of the said John A. Scott still failed to balance his account but left him still indebted to the defendant company as will hereinafter more fully appear.

Wherefore, defendant prays that plaintiff take nothing by his second cause of action.

ANSWER TO THIRD CAUSE OF ACTION.

Defendant, for its answer to the third cause of action, denies each and every material allegation therein contained.

Further answering the third cause of action, defendant alleges that the plaintiff did, at the Wichita branch house of this defendant, on or about the 25th day of July, 1919, order certain repairs and parts of the value of Thirty-eight Dollars Fifty Cents ($38.50), paying thereon as a credit the sum of Ten Dollars ($10.00), and that the C. O. D. charges thereon were Sixty-eight Dollars and Fifty Cents ($68.50), which the plaintiff paid, together with the express thereon. The defendant further admits that the charge should have been Twenty-eight Dollars Fifty Cents ($28.50), an error of Forty Dollars ($40.00) in the said defendant's favor, and the defendant further admits that there was a return of said goods, as alleged, of the value of Twenty Dollars Fifty Cents ($20.50).

But defendant alleges that due and proper credit for said error of Forty Dollars ($40.00) and said return of Twenty Dollars Fifty Cents ($20.50) has been made upon the books of the company, and that at the date of said alleged transaction the plaintiff was indebted to this defendant in a sum in excess of the credits so given as will hereinafter more fully appear, and that, by virtue of said

return and said error of Forty Dollars ($40.00), this defendant became in no way liable to the plaintiff.

Wherefore, defendant prays that plaintiff take nothing by his third cause of action.

ANSWER TO FOURTH CAUSE OF ACTION.

For answer to the fourth cause of action herein, the defendant denies each and every allegation therein contained and reiterates each and every allegation contained in the answer to the first cause of action herein.

The defendant admits that the plaintiff was engaged in the threshing business during the summer of 1919, and admits that he ordered certain parts from the defendant herein, and alleges that each order as received was accurately and promptly filled, and defendant now refers to his answer to the second cause of action herein, and adopts the allegations therein contained and says that the error, if any there was, which occasioned the failure of the plaintiff to receive the correct articles and parts ordered, or intended by him to be ordered was his own error and his own negligence, resulting, as this defendant is advised and believes, from a confusion in the plaintiff's own mind between the engine number and the boiler number of his threshing machine.

Defendant further alleges that the defendant was unable, and is now unable, to fill orders for parts or repairs for the threshing machines of customers except in compliance with the language of the orders received, and that the orders received from the plaintiff Scott at the time and under the circumstances alleged, were received and filled in perfect good faith by the defendant and in exact compliance with the telegraphic orders received, and that the correction of said order, when received by the defendant, received immediate and prompt attention, and that, when the order was corrected, the parts were promptly received by the plaintiff, and that no delay was occasioned by this defendant but that the delay, if any, was occasioned solely by the negligence of the plaintiff in this cause.

Defendant alleges that on July 27, 1919, at eleven (11) P. M., the following telegram was received from John A. Scott, the plaintiff herein, in the regular course of business:

> "Express at once high pressure cylinder and engine bed combined engine number eleven eight two eight to Hobart."

That defendant, on July 28, 1919, received a telegram, as follows, from the said John A. Scott:

> "Express to Hobart Oklahoma one Reticence."

And defendant alleges that in compliance with said two telegrams there was shipped engine bed and cylinder with letter and symbol D-2624 and intermediate gear trunion D-2518 on July 28, 1919, and that the items thus shipped were exactly the items ordered by said two telegrams above.

That on July 30, 1919, at 10:07 P. M., the defendant received a telegram from John A. Scott, as follows:

> "High pressure cylinder here but too small. Rush six one half by ten engine number eleven eight two eight. Wire me at once here."

And in response thereto, at 8:30 A. M., July 31, 1919, the following telegram was sent by the defendant to plaintiff:

> "Records show correct cylinder sent for engine of number given. Give us number and letter and size cylinder wanted."

Thereafter, and on the said 31st day of July, 1919, at 1:15 P. M., a telegram was received as follows from the said John A. Scott, plaintiff:

> "Cylinder six one half by ten engine number eleven eight two eight twenty horsepower."

And thereupon the correct cylinder was sent and a proper trunion in lieu of the original trunion.

And defendant alleges that if there was any delay or

error in the shipment of said order, it was caused solely by the negligence of the plaintiff.

Wherefore, defendant prays judgment.

ANSWER TO FIFTH CAUSE OF ACTION.

Defendant, answering the fifth cause of action of the plaintiff, denies generally and specifically each and every material allegation therein contained, and for his further answer to the said fifth cause of action, refers to the answer to the fourth cause of action as hereinabove set out, adopts the same fully and makes it a part hereof.

Wherefore, defendant prays judgment on the fifth cause of action that plaintiff take nothing.

Wherefore, having fully answered as to all the causes of action of plaintiff's petition, the defendant prays that plaintiff take nothing by his petition, but that the defendant have judgment for its costs.

CROSS PETITION.

The defendant, for its cross petition against the plaintiff, alleges and states that from the 24th day of March, 1915, up to and including the 8th day of September, 1919, the plaintiff and the defendant had numerous business transactions constituting a running account which has never been fully settled, but which has varied from time to time, and that an itemized statement of said account is hereto attached, which itemized statement is true and correct and is duly verified.

That, as indicated by said statement, the plaintiff is indebted to this defendant in the sum of Twenty-nine Dollars Ten Cents ($29.10), no part of which has been paid but which is long since due.

WHEREFORE, the defendant prays judgment against the plaintiff for the sum of Twenty-nine Dollars Ten Cents ($29.10) and all its costs herein laid out and expended.

(Signed) LINEBAUGH AND PINSON,
Attorneys for Defendant.

Monthly Statement COPY

St. Joseph, Mo., April 28, 1922.

Mr. John A. Scott,
400 East Elder St., Oklahoma City, Okla.
Branch at Wichita, Kansas

In Account With Geo. O. Richardson Machinery Co., Incorporated.

THE OLD RELIABLE RUSSELL LINE
Engines, Threshing Machinery, Saw Mills, Supplies and Repairs.

Date	All bills payable in par funds at St. Joseph. Remit in Postal or Express Money Orders or Bank Draft.	Repairs	Supplies	Totals
1915	Account Rendered.	Balances.		
Mar. 24	To Invoice No. 5036 (Wichita)	35.65		
27	21100 (St. Joseph)		5.00	
June 7	5235 (Wichita)	2.25	.06	
29	5422 "	15.50		
July 9	5530 "	30.75	3.75	
12	5552 "	9.50		
14	5586 "	4.50		
15	5602 "	14.25	3.00	
15	5604 "	24.75		
20	5655 "	22.00		
21	22164 (St. Joseph)		7.00	
28	5744 (Wichita)		1.25	
Aug. 9	5864 "			1.00
3	5802 "		.75	
Sep. 25	22931 (St. Joseph)			32.00
Oct. 14	23027 "		35.00	
19	6198		4.10	2.05
			$207.25	$46.86
1916				
Oct. 16	7264			3.53
				$50.39

	CREDITS	REPAIRS	MDSE.	
1915				
May 17	By return	5.00		
June 15	" "	2.75		
Aug. 20	" "	6.81	14.56	
		$192.69	50.39	$243.08
1917		Interest - - - -		43.82
				$286.90
Apr. 16	By Cash	23.00		
1918				
Apr. 3	" Advertising	20.80		
1919				
Aug. 3	" Error	40.00	(R. O. 10355)	
31	" Return (Net)	20.50	(Wichita)	
Sept. 8	" " "	153.50	(St.Joseph)	$257.80
		Balance due - - - - -		$ 29.10

(Endorsed on the back thereof, as follows:

In the District Court of Oklahoma County, State of Oklahoma. No. 29,106. John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a corporation, Defendant. Petition to Vacate Judgment. Filed in District Court Oklahoma County, June 1, 1922. Cliff Myers, Court Clerk.

BE IT REMEMBERED: That on the 13th day of June, 1922, the same being a regular judicial day of the regular May Term 1922, of the District Court of Oklahoma County, State of Oklahoma, the above entitled cause came regularly on, in its order, to be heard on the Petition to Vacate Judgment filed on behalf of the defendant, and the Plaintiff's Demurrer thereto; said hearing being held before Honorable James I. Phelps, Judge. The plaintiff, John A. Scott, present in person and by Mr. Charles L. Moore and Messrs. Everest, Vaught & Brewer of Okla-

homa City, Oklahoma; Mr. Everest of counsel, his attorneys of record; and the defendant, Geo. O. Richardson Machinery Company, a corporation, present by Messrs. Linebaugh & Pinson of Muskogee, Oklahoma; Mr. Pinson of counsel, its attorneys of record. Both parties announced ready for the hearing.

THEREUPON: A jury being waived by both parties, the said hearing was held before the Court. The said proceedings had therein being as follows, to wit:

By MR. PINSON: The defendant, Geo. O. Richardson upon its special appearance and motion to quash summons and service thereof, now offers in evidence,—I think we will ask to have Mr. Myers sworn.

MR. JOHN R. MYERS, being called as a witness on behalf of the defendant, being first duly sworn upon his oath testifies as follows:

DIRECT EXAMINATION.

By MR. PINSON:

Q. Your name is John R. Myers?

A. John R. Myers, M-Y-E-R-S (witness spelling last name).

Q. Where do you live?

A. St. Joseph, Missouri.

Q. What is your business or profession?

A. I am President of the Geo. O. Richardson Machinery Company.

Q. That's the defendant in this case before the Court?

A. It is.

Q. How long have you been associated with the defendant?

A. Since, October, 1911.

Q. Are you familiar with all their business?

A. I didn't understand; I beg your pardon.

Q. Are you familiar with that business in all its aspects, and particularly familiar with the business as trans-

acted with dealers or investors within the State of Oklahoma?

A. I am.

Q. Is the Geo. O. Richardson Machinery Company a corporation or a partnership?

A. It's a corporation; a Missouri corporation.

Q. When was that corporation organized or started?

A. The present corporation was in 1914.

Q. Prior to that time, you were associated with the corporation, were you, from 1911?

A. Yes.

Q. To 1914?

A. Yes.

Q. Mr. Myers, are you familiar with the contract in which you entered into with persons within the State of Oklahoma who sold your machinery?

A. I am.

Q. Can you identify the document which I hand you and which is headed, Commission,—(counsel interrupted).

A. Plaintiff's Exhibit "C".

Q. That's Plaintiff's Exhibit "C" and headed as, "Commission agreement"; do you know what that is? (Counsel handing witness Exhibit "C" to the deposition of E. A. Harris.)

A. It is a commission contract made with E. A. Harris of Muskogee, Oklahoma, for the year 1920.

Q. Now, Mr. Myers, is that the contract under which your machinery was sold by Harris, or Harris and his associates, within this state?

A. Yes, sir.

By MR. PIXSON: We offer in evidence the contract identified.

By MR. EVEREST: Objected to for the reason that the same is incompetent evidence on the present motion, being an attempt to re-try the issues over and beside, by the original case upon a motion as to the question of whether or not the defendant, the Geo. O. Richardson Machinery Company, was doing business in the State at the date of

the filing of the original petition and judgment was rendered on the 23rd day of October, 1920.

By COURT: Overruled.

By MR. EVEREST: Note the exception.

By COURT: Note the exception.

NOTE BY REPORTER: Plaintiff's Exhibit "C" to the deposition of E. A. Harris having been offered on behalf of the defendant and having been received in evidence by the Court over the objections and exceptions of the plaintiff; a full, true and correct copy of said Exhibit "C" being in words and figures as follows, to wit:

PLAINTIFF'S EXHIBIT "C".

"M. E. Fullenwider,
Exhibit 1
Official Reporter.

St. Joe-500-12-19-OP&PCo.

COMMISSION AGREEMENT No. ——

This Agreement made at St. Joseph, Missouri, between Geo. O. Richardson Machinery Co., incorporated under the laws of the State of Missouri, (proof of incorporation waived by party of the second part), with principal offices at St. Joseph, Mo., party of the first part, and E. A. Harris of Muskogee, County of Muskogee, State of Oklahoma, party of the second part.

Witnesseth, That the party of the first part agrees to furnish Machinery of The Tussell & Co.'s manufacture, and Repairs and Attachments for same, as hereinafter specified, on orders taken by said party of the second part, which have first been submitted to and approved and accepted by said party of the first part, by an executive officer of the party of the first part, at its home office, until October 31, 1920, provided it has them on hand not engaged. Also to supply a reasonable amount of advertising matter and all blanks required under this agreement,

free of charge, except transportation, which said second party hereby agrees to pay.

To allow the party of the second part, as full compensation and consideration of transacting the business and fulfilling the conditions herein required, specified or implied, commissions as follows:

On Steam Traction Farm Engines, Russell Giant 30-60 H. P. Kerosene Tractor, Threshers and Water Tanks;

For Cash on delivery or with order 10 and 10 per cent.

For one half cash on delivery, balance first fall, with interest 10 and 7½ per cent.

On one fall's time, with interest from date of delivery 10 and 5 per cent.

On two fall's time, with interest from date of delivery 10 and 2½ per cent.

On three fall's time, with interest from date of delivery (on steam engines or full outfits) 10 per cent.

On Farmer's Friend Pneumatic Stackers,

(special order and settlement required)

Up to and including 46" rear inside measurement $25.00; over 46" rear inside measurement $30.00

Arbitrary cash discount on Pneumatic Stackers up to and including 46" rear inside measurement $15.00; over 46" $18.00.

On Saw Mills and Saw Mill Engines:

For cash on delivery or with order 10 and 5 per cent.

On time terms, one-third cash, one-third six months, one-third within year, with interest from date of delivery 10 per cent.

On Repairs—Cash thirty days, (See lines 59-60-61) 20 per cent.

On other size gas tractors—special prices on request.

On Road Rollers—special prices on request.

Time Terms on Pneumatic and Sattley attached Stackers, one-half in the fall of 1920 and one-half in the fall of 1921 orders to be taken on blanks provided for the purpose by said party of the first part.

Commissions under this contract are based on the printed price list in force at date of sale, which list is made a part of this contract, do not share in interest and expense of collecting, and are payable as follows: On cash sales, commissions shall be paid out of the cash; on other sales, proportionately out of cash and proceeds of notes when each note is paid in full.

As Evidence of the amount of commission, other than cash, the party of the second part shall receive from the party of the first part Non-Negotiable commission certificates, bearing the same number as the notes, setting forth amount contained in each note, and when such note is due. Said commission certificates shall not be transferred or assigned by second party, and when payable, shall at all times be subject to any account or obligation held against said second party by the party of the first part.

Provided that no compensation shall be allowed or paid on any article taken back, whatsoever the cause; on any order taken and not filled; on any machinery not settled for; on any sale to irresponsible parties, or where foreclosure proceedings may at any time become necessary, and in any such case, Commission certificates, if issued, shall be void and shall be returned to party of the first part for cancellation.

The party of the first part shall have the right to renew, extend, abate or discount any note or notes taken under this contract, when in its judgment it may be necessary or desirable, and in all such cases the commission included in such notes shall be renewed, extended, abated or discounted in like manner; and when new notes are taken, certificates issued shall be returned and closed by new certificates

based on the settlement obtained.

The party of the second part agrees; in consideration of the above, which is hereby assented to, to undertake to secure orders for the said articles on the following terms and conditions, to be strictly kept and performed, to-wit:

To at all times during the term above named, in good faith maintain the reputation of the machinery covered by this agreement and use his best endeavors to secure orders for it in preference to any other made for like purposes.

To take and recommend orders only at prices and on terms within the limit authorized by the party of the first part and subject to the conditions and warranty contained in the blank orders furnished by the party of the first part which blank orders shall be used in every case; to permit no machinery to be returned, and to refund no payment to a purchase unless due notice has been given to the said party of the first part, and its written consent obtained. Freight in all cases to be paid by the purchasers, or party of the second part.

To make repair settlement by payment in cash within thirty days from date of Invoice, it being understood and agreed that Commission specified above applies on repairs manufactured by THE RUSSELL & COMPANY only. Supplies and fittings will be furnished at net cash prices on application.

To take orders only from persons responsible beyond a doubt, or who will give good and sufficient security.

That all notes taken for machinery sold under this agreement shall be drawn to the order of the party of the first part, with interest from date, shall be on blanks provided by the party of the first part, and payable at some responsible bank or express office; that the makers of all notes, which may be taken for the first party in pursuance of this agreement, shall, at the time such notes are taken, be men

of known responsibility and good reputation for veracity and the payment of their debts in the localities where they reside, and that the orders from the makers shall be accompanied by property statements of the makers or endorsers setting forth that they own and hold in their own names unencumbered real estate worth at tax valuation over and above all exemptions a sum equal in amount to the deferred payment, and in the absence of such property statements, said second party hereby guarantees the payment of all notes growing out of such sales; and this shall be sufficient evidence of such guaranty—demand, protest and notice of protest and non payment being severally waived.

To retain a lien in favor of the party of the first part on all machinery sold.

To deliver no machinery to any customer until the same shall have been fully settled for in accordance with terms of order given for same and accepted by us.

That if the party of the second part shall use, or allow to be used, any machinery, or parts of machinery, or deliver same to any customer or other person before it is fully settled for, said party of the second part shall account to said party of the first part, on demand, for the price of such machinery, or parts, and shall waive all claims under the warranty or any machinery so used or delivered.

That if the party of the second part shall rob, or by neglect allow others to rob any machinery of any of its parts, so as to in the least degree hazard its sale or its successful working, said party of the second part shall be fully bound to the party of the first part as the bona fide purchaser of such machinery, and shall further waive all claims under the warranty on any machinery so robbed.

To make full and immediate report of each sale, using blanks furnished for the purpose, setting forth name and address of purchaser, the size, factory

number and kind of machinery sold, date of sale and terms of settlement; to remit promptly to the party of the first part the proceeds of each sale less commission on cash portion.

The party of the first part shall be under no obligation by reason of this agreement to furnish the party of the second part with sample machinery or stock repairs or attachments, but should any be by special agreement so furnished, it shall, while in the hands or control of the party of the second part, remain and be considered as consigned property belonging absolutely to the party of the first part and the party of the second part shall provide suitable storage to protect it from the weather or other damage; shall pay all taxes and insurance which may be taken therein and shall make no charge for handling or storing the same. Such machinery, repairs and attachments shall at all times be subject to the order and control of the party of the first part and orders taken by the party of the second part for the same, shall be taken subject to the same conditions as those taken for other machinery. Should any such consigned machinery be reshipped at the order of the party of the first part, freight advanced thereon by the party of the second part shall follow the same and shall not be charged back to the party of the first part without consent in writing.

To deliver to the party of the first part, or on its order on demand, all repairs on hand belonging to said party of the first part, free of freight.

To be accountable to and reimburse the party of the first part, or assigns, for any losses or expenses resulting from any deviation from this agreement.

That the party of the first part may in any special case waive any of the requirements herein named, but such waiver shall not be construed as a general waiver of contract or any other requirements thereof.

That no verbal agreement bearing on transactions under this contract shall be binding on the party of the first part.

That no agreement in writing shall be valid as against the party of the first part, until the same shall have been ratified by and registered in the Home Office, St. Joseph, Mo., and signed by an executive officer of the party of the first part.

The failure of the second party to comply with any requirements herein expressed shall be valid grounds for terminating this agreement.

That said second party shall stand all cuts or discounts from list prices, made to purchasers on all machinery sold, other than cash discounts herein authorized, whether sale is made by him or through the assistance of, or by a representative of the party of the first part.

That should the party of the first part render assistance in making sales, securing same or making settlements, such action shall not relieve the said second party from any liability under this contract, nor restore warranty if rendered void.

That all settlements shall agree exactly with terms of order taken from purchaser.

That the party of the first part reserves the right, and the party of the second part concedes it, to sell any of its machinery, whether mentioned in this contract or not, direct to any city, town, county or state, or any representatives thereof or to the federal government or to another manufacturer, or road contractor any place in the United States.

It is further agreed and understood that this does not include or cover second-hand machinery, or any machinery manufactured or furnished by said first party and not herein specified; but should said first party by special agreement in writing negotiate the sale of any such machinery through said second party, all of the provisions of this contract shall apply to such sale, except those fixing price, terms of sale and

rates of commission, which shall be special in each case. All orders for second-hand machinery to be taken on special blanks to be furnished by said party of the first part for that purpose.

It is further expressly understood and agreed that the sole and only authority which the said second party has to act for said first party is to solicit orders for the property mentioned herein, and on such orders as may have been accepted and filled, to receive cash or other proceeds to first party's order, and that second party is the fiduciary custodian of all the property or its proceeds, which may be delivered to him under this contract, and has no authority to handle or use it except as provided herein, and has no authority to bind first party by any agreements, acts or omissions, or by accepting or receiving any service in legal proceedings; and that all machinery and other property received by said second party under this contract shall continue to be the property of said first party until settlement has been made and accepted by said first party; and all notes and other proceeds from sales of property shall be the sole property of the party of the first part, subject to no offset or counter claim, and in no case shall they, or any part of them, be used by the party of the second part.

This contract shall not be binding upon the party of the first part until the same shall have been registered at the Home office of the party of the first part, St. Joseph, Missouri, and signed by an officer of the Company.

GEO. O. RICHARDSON MACHINERY CO.
Incorporated.

(Signed) By Jno. R. Myers, Prst.
Party of the First Part.

(Signed) E. A. Harris
Party of the second part.

Registered at St. Joseph, Missouri, this — day of — 19...

(Stamp appearing thereon as follows): JNO. R. MYERS, Apr. 26, 1920. St. Joseph Mo.

(Endorsed as follows):

No. —— Commission Agreement between Geo. O. Richardson Machinery Co., Incorporated and E. A. Harris, Muskogee, Okla.

St. Joseph, Missouri. Territory in which the party of the second part expects to solicit orders:

Muskogee, Muskogee Co. Oklahoma. Date April 22nd, 1920, Expires October 31, 1920. Please read your contract. Made by R. N. Smith.

Q. How long has that form or character of contract been in use by your company?

A. Well, this form or a very similar form has been in use ever since my connection with it.

Q. You say, a very similar form; have you in mind any changes which have been made, which has taken place, with regard to that form of contract?

A. The change has been in the amount of discount and perhaps some minor changes in wording to clarify certain portions of it, but there have been no material changes.

Q. Was that the character of contract into which you entered with the salesmen within the State of Oklahoma who sold your machines or solicited orders for your machines; was that the character of contract entered into with all of them?

A. With all dealers; yes, sir.

Q. You refer to "Dealers," will you state to the court in what manner these dealers, exactly in what manner these dealers handled your machinery under those contracts?

A. Well, they solicited and sent to us, orders for our acceptance, or, if they purchased outright merely from us and then resold it as far as they—(witness interrupted).

Q. Now those orders are embodied in the contract itself, are they?

A. Yes, sir, the contract covers that.

Q. Prior to the year 1920 and during the year 1920, had your company ever shipped any machinery into this state, except upon orders solicited by agents and sent to your home office for acceptance, prior to October, 1920?

A. We had occasionally shipped orders, or did ship machinery into Oklahoma on Dealers' orders that,—in addition to the orders of the ultimate purchasers and we had, once or twice, shipped in, for a fair or something of that kind, for exhibition purposes.

Q. Was that prior to 1920?

NOTE BY REPORTER: No answer by the witness.

Q. Now, confine your answers to the period of time up to October 23rd, 1920, at the time that this suit was instituted?

A. I don't recall whether there was anything prior to 1920 or not.

Q. Have you, at any time prior to 1920, stored any property or goods of your regular equipment, your regular stock, within the State of Oklahoma for sale?

A. No.

Q. Did you,—have you, at any time prior to October 23, 1920, kept for sale or exhibited for sale any repairs or parts of your machinery?

A. No, we never have.

Q. Have you,—had you at any time prior to that time or do you now employ agents or servants to go about and repair your machinery and make repairs upon it within the State of Oklahoma?

A. No, we employ no one in the State of Oklahoma.

Q. Have you, at this time, anywhere within the State of Oklahoma a stock of repairs and parts which belongs to the Geo. O. Richardson Machinery Company?

BY MR. EVEREST: Wait a minute; object to that as immaterial, since the date of the service of summons.

BY MR. PIXSON: I rather think you are right; I withdraw the question; I thank you, sir.

NOTE BY REPORTER: Question withdrawn by counsel.

Q. Prior to October 23, 1920, did you ever have within the State of Oklahoma, at any place or at any point, a

stock of repairs and parts for equipping and repairing your machinery?

A. No.

Q. You suggested that all orders were sent to the home office for acceptance; those orders, and when solicited by the agent, the terms under which you were selling machinery as stated in the contract into yours, these contract agreements, the terms of them and that covers the commission of the sale of the machinery?

A. Yes.

Q. Which the seller will obtain, the sale will obtain?

A. Yes.

Q. Have you ever, at any time, advertised or stated that the company was an Oklahoma corporation or was a domestic corporation?

A. No, sir.

Q. Have you ever attempted, at any time, your company, since you have been connected with it and prior to October 23, 1920, to avail yourself of the protection of the Oklahoma laws in any particular other than in suits upon an account or a note?

A. Please read that question.

NOTE BY REPORTER: Last question read to witness by Reporter.

BY MR. EVEREST: That's incompetent, immaterial and calls for a conclusion and an opinion of the witness and not for any facts.

BY THE COURT: Overruled.

BY MR. EVEREST: Exception.

A. I don't believe I got quite the,—(statement not completed).

Q. Well, have you at any time sought the protection of, or in any way availed yourself of any Oklahoma law except as a plaintiff in a suit on a note or something of that kind?

BY MR. EVEREST: We further object to the question as being argumentative.

BY THE COURT: Overruled.

BY MR. EVEREST: Exception.

A. I don't know of anyway in which we have, we have been plaintiff in suits and I don't quite catch just what you want.

Q. Well, that's what I wanted to know, to get at, if you have been plaintiff in a suit, Mr. Myers, was Joe Morris Secretary of State of Oklahoma in 1920, in any way connected with your company as an officer or stockholder or otherwise?

A. He was not.

Q. In October, 1920, was he authorized by you or has he ever been authorized by you or your company, I mean, to accept service or to act as a service agent for you within this state or any other state?

A. No.

BY MR. EVEREST: Wait a minute; we object to that as being immaterial for the reason that the statutes of Oklahoma have constituted the Secretary of State service agent, and in the absence of any other designation is an agent.

BY THE COURT: Overruled.

BY MR. EVEREST: Exception.

Q. You were Manager also, weren't you, of the company in 1920?

A. Yes.

Q. In the year 1920?

A. Yes.

Q. And had active charge of the sales and the business of the company, did you?

A. Yes.

Q. What other persons were connected with the offices at that time, particularly in October, 1920, and following that, in the office?

A. We have the Secretary of the Company, is in the office and there are several other people in the office.

Q. Now, the others in what character or the others employed or are there any other officials in the company who are constantly in the office?

A. Now, the Secretary is the only other official.

Q. In what way do the Secretary's duties devolve upon him?

A. Principally the bookkeeper.

Q. Part of the correspondence of the office and all matters pertaining to the general business of the office is carried through your hands, is it?

A. Yes, it passes through my hands.

Q. Mr. Myers, would you, or are you able to say whether or not during the year 1920, or at any time thereafter, you were advised by the Secretary of State or any other persons that your company had been sued by John A. Scott in the District Court of Oklahoma County?

A. I will say we were not advised.

Q. Upon what occasion did you first learn of the bringing of the suit?

A. The first I heard of any suit was we had sold some machinery that was shipped to a customer at Hobart, Oklahoma, and I had understood or it was reported in to me that the Sheriff down there was making an attempt to attach that machinery or levy on it, but that he didn't levy on it and I immediately wrote there, asking to find out what there was about it; that I had no knowledge of it and then in a few days, some days later, we were advised that the Sheriff of Muskogee County has levied upon some machinery that we had shipped to Harris-Smith Machinery Company at Muskogee, and at that time I employed your company to investigate and determine what it was all about.

Q. That was in,—(counsel interrupted).

A. That was in 1921, I think, along about July; I am not sure of the date.

Q. During the summer of 1921?

A. Yes, sir.

Q. Well, that was the first intimation that you or any officer of your company and your company actually had?

A. Yes, that was the first we had, although I had seen Scott in the mean time and had considerable correspondence with him.

Q. Was any,—(statement not completed).

BY MR. PIXSON: (to Reporter). Kill that question.

NOTE BY REPORTER: Question withdrawn by counsel.

Q. Your business, your company is engaged in the business of selling a character of machinery?

A. Threshing machinery and tractors.

Q. You stated a while ago that occasionally prior to 1920 you had shipped goods into the State upon Dealers' order prior to the receipt and acceptance of an order solicited by an ultimate consumer; to what extent would you see that shipment, when you say, "occasionally?"

A. Oh, we had, probably, two or three times, the request of a dealer, who said that he bought through, or that he would sell the machinery if he had a secretary that would ship it in on his order.

Q. Other than,—(counsel interrupted).

A. But it wasn't a practice to do it at all.

Q. And that, you would say, as many as two or three times in the course of the nine years that you were with the company?

A. Yes.

Q. In what manner would that character of order be handled with regard to charging it or what would your books show in regard to that particular order?

BY MR. EVEREST: We object to that as being immaterial and calling for a self-serving declaration.

BY MR. PINSON: Specially, all their books.

BY THE COURT: Overruled.

BY MR. EVEREST: Exception.

A. Why, we would charge it to the dealer.

Q. Who paid the freight on that character of order?

A. The dealer would pay the freight on it.

Q. Well, how would you say that was shipped, or, that is, your firm and the railroad would permit you, in what manner, in which you would ship that to the dealer?

A. We would call it a consignment machine.

Q. A consignment machine?

A. Yes.

Q. That F. O. B. St. Joseph?

A. Usually F. O. B. at factory.

Q. F. O. B. factory; where is the factory, Mr. Myers?

A. Massillon, Ohio.

Q. Massillon, Ohio; did any of the officers or employees of your company prior to 1920 ever personally come into the state and remain for any length of time on business purposes?

A. No.

Q. Did you,—do you have any office or place of business of any kind or character within the State of Oklahoma?

A. We have not.

Q. The property which was taken or was attempted to be taken in execution in this case was, in fact, your property, was it; or, the company's property, Mr. Myers?

A. Yes, it was charged to the Harris-Smith Machinery Company but we retained title until the payment was paid for it.

Q. For your own protection?

A. For the purchase price.

BY MR. PIXSON: I think that's all.

CROSS EXAMINATION.

BY MR. MOORE: Mr. Myers, the present corporation is new; when was it re-incorporated?

A. The original, Geo. O. Richardson Machinery Company, the corporation, was incorporated in 1892; it was incorporated for a period of ten years; that, in December, 1901, it was allowed an extension, an additional ten years, bringing it up until March in 1912; well, as I said a minute ago, I came with the company in October of 1910 and I didn't have any occasion to go into the expiration of the charter and in 1912, the original charter expired but, for some reason, the Missouri Secretary of State didn't notify us and we ran as a defunct corporation until 1914, when it came to my attention that we were, as a matter of fact, we were doing business without any charter, then.

Q. Then, in 1914, you took out a new charter in Missouri?

A. In 1914, we incorporated the company of the same name and took over the business of the former corporation.

Q. And, have been in effect, continuing the corporation then, since organized?

A. Well, of course, that new corporation had to buy the property of the former corporation.

Q. You assumed all the obligations of the former corporation?

A. Yes, sir, but, as a technical corporation, why,—(Witness interrupted).

Q. Well, any cause of action that might have arisen since 1914, then, would be against the present corporation, Geo. O. Richardson Machinery Company?

A. Oh, yes; yes.

Q. Now, you examined that contract that you made with E. A. Harris?

A. Yes, sir.

Q. Have you read his deposition that you have in your hand there?

A. No, I haven't; I read it some time since but I am not familiar with it, now.

Q. Well, you are familiar, are you not, with the business that he transacted?

A. Yes.

Q. That is, on behalf of your company?

A. Yes.

Q. Now, he stated in this deposition that he had a contract with your company for 1920 to represent it in all of the counties of Oklahoma which lay east of a line drawn from Tulsa to Durant, Oklahoma; is that correct?

A. We gave him the right of sale in those counties, he represented us to that extent.

Q. Yes.

A. He was not an agent.

Q. Well, any business then that was procured by him under this commission agreement in 1920 in Muskogee County or Vinita would be business in his scope of employment?

A. He had a right to solicit orders in that territory.

Q. Well, he had all the other counties here in this contract?

A. Yes, under the contract, certainly.

Q. Now, in his deposition, he stated that you had a firm at Vinita, Oklahoma, which handled your machines there in 1920, Vinita, Oklahoma?

A. Yes, sir, he had the same or a similar contract to this.

Q. Well, he testified he that he made the contract for your company with the ———— Implement Company, I think?

A. I don't think he did.

Q. Well, he stated this, that it was similar to the contract that was identified and made with Mr. Smith or Mr. Harris?

A. Well, it was a similar contract, yes; all our contracts with agents are similar to the Harris contract.

Q. Yes; well, then, you had in that year, you had not only the contract with Mr. Harris, his general contract to solicit business for you in those counties east of the line I spoke of?

A. Yes.

Q. And then, he had authority to make contracts with local agents?

A. No, he had no authority to act, not to be our agent at all, with the making of other contracts.

Q. You had contracts then, in 1920, with E. A. Harris at Muskogee?

A. Yes.

Q. And also with Mr. Smith of Muskogee?

A. No, Mr. Smith wasn't under contract in 1920; he was in 1921.

Q. Well, he had your machinery and assisted Mr. Harris, did he not?

A. In 1920, Mr. R. N. Smith lived at Independence, Missouri, and was a traveling salesman for us; he was on a salary as travelling salesman.

Q. Now, he testified in this deposition that in 1920, machines were kept at Vinita by the Spaulding Implement

Company for the purpose of sale and making sales; is that correct?

A. No, sir, in 1920, the Spaulding Implement Company sold a couple of small machines, the small machines, most generally they shipped four in a car and they ordered four machines expecting to have a sale on the other two before they reached destination and I mean, before they arrived at Vinita and the machines were loaded and they didn't sell them and they were carried on hand because they hadn't been all sold.

Q. They was sold on a consignment contract; that is, they were delivered down by your company?

A. The original one was; we got the order for it before there was any shipment made but the others, the remainder of that car left us on a consignment contract.

Q. Then, two were shipped on order and two on consignment, is that right?

A. Yes; yes.

Q. How long, now, were they kept there by the Spaulding Implement Company?

A. Well, they were kept there until the next spring, and they hadn't been able to sell them and we let them go to the Harris-Smith Machinery Company.

Q. Then, during 1919, 1920, they were on hand then, the rest of that year and 1921?

A. Yes, sir.

Q. What ultimately became of those machines, do you know?

A. Well, I don't know; some of them have been sold, I think, or, practically all of them; I don't remember now just what disposition was made of those particular machines.

Q. Well, you had had machines on exhibition at the fair at Vinita that year, in 1920, did you not?

A. I don't know whether the Spaulding Implement Company exhibited any, I wasn't down there.

Q. If Mr. Harris testified that they were on exhibition, he was able to say?

A. Well, they may have been but I am not positive

it was made by the Spaulding Implement Company and not by our company.

Q. Well, was it your custom, then, occasionally to ship machines then into Oklahoma that had not been ordered by the company, kept them there for sale, that had not been ordered by the Spaulding Implement Company?

A. I wouldn't call it a custom; it has only been done since ten year.

Q. And you were notified there?

A. Yes.

Q. And, to ship two machines?

A. Yes, we did make that shipment.

Q. And you also shipped some machines down to Muskogee in the same year, did you not?

A. Let's see, I don't know whether anything was shipped to Muskogee or not except that year.

Q. How about Cordell?

A. How?

Q. How about Cordell?

A. No, we never shipped there, I don't think, they were shipped to Cordell over.—(witness interrupted).

Q. Well, you had a machine on exhibition there in 1920 at Cordell, didn't you, at some Parker show?

A. Well, my recollection is, I am not sure of this, I won't say positive but my recollection is, it was some machinery had been sold and customers that they exhibited, I am not sure about that, however.

Q. What is your agent's name at Wichita, in charge of your office?

A. Mr. Fred Weiland.

Q. He is the general agent of yours in their branch office at Wichita?

A. Yes.

Q. Wasn't he down there that year, or not, exhibiting your machines?

A. I don't know whether he was or not; I don't know, they weren't exhibited on behalf of the company, I am sure.

Q. Well, if the branch office at Wichita had them there, exhibiting, wouldn't that be for the company?

A. Well, the branch office at Wichita wouldn't exhibit a machine on behalf of the company without asking permission from me.

BY MR. EVEREST: Move to strike that out, as giving a conclusion and an opinion of the witness.

BY COURT: Sustained and so ordered.

Q. Well, are you familiar with the sales that were made by your company in Muskogee County in the year 1920, Mr. Myers?

A. I am reasonably familiar, if they came through my office at the time, I don't know from my memory that I can check every one right off the bat.

Q. Do you know of your company having sold in May, 1920, a machine to Mr. Carroll?

A. Carroll? I ain't, I haven't got the record here.

BY MR. PINSON: I might save time, I have the record right here (counsel indicating).

BY MR. MOORE: I want to keep the records here if you will admit them, all right; I have the certified copy here of them.

BY MR. PINSON: Chattel mortgages?

BY MR. MOORE: The chattel mortgages.

BY MR. PINSON: Yes, sir, we admit them; well, just call whatever you want to get in the record and we will admit it; its a question of those chattel mortgages, we admit all of those mortgages are recorded.

BY MR. MOORE: Now, then, see if you will agree to this, then, Mr. Pinson: Plaintiff here offers the witness certified copies of certain chattel mortgages made to the defendant company and filed in the office of the County Clerk of Muskogee County on June 7, 1920, numbered form 135982 to 135987, both inclusive, and also a chattel mortgage numbered 141490, filed December 31, 1920. The mortgagors being W. C. Carroll and others; William Kirksey and others; Call Ingram; T. A. Anthany; G. W. Baldwin; W. C. Carroll, and S. E. Cozart; also, M. R. McGahey and G. E. Blackstone. All those mortgages.

BY MR. PINSON: I don't know, probably we should technically object to the mortgage of December 11th, but I will waive that, though.

BY MR. MOORE: Well, we allege you did a continuing.

BY MR. PINSON: That's all right.

BY MR. MOORE: That says, the purchasers, both before and after.

BY MR. PINSON: Well, we contend that the chattel mortgages are perfectly admissible.

BY MR. MOORE: We offer in evidence the certified copies of the mortgages, being Exhibits as follows, to wit: 1-A, 1-B, 1-C, 1-D, 1-E, 1-F 1-G and 1-H.

NOTE BY REPORTER: Exhibit 1-A, being offered in evidence on behalf of the plaintiff and having been received in evidence by the Court, without objections on behalf of the defendant; a full, true and correct copy of said Exhibit 1A being in words and figures as follows, to wit:

"M. E. FULLENWIDER
135982. Exhibit 1-A
OFFICIAL REPORTER

CHATTEL MORTGAGE.

Know all men by these presents:

That W. C. Carroll, T. A. Anthony, S. Cozart, G. W. Baldwin and Call Ingram and James McKissie of the Township .....and of Muskogee County, in the State of Oklahoma, mortgagor—have this day bargained and sold, and do..... hereby bargain, sell or mortgage unto GEO. O. RICHARDSON MACHINERY CO., an incorporated company of ST. JOSEPH, BUCHANAN COUNTY, MISSOURI, mortgagee, for the sum of Twenty Eight Hundred and no 100 Dollars, in hand paid, receipt whereof is hereby acknowledged, the following described personal property, to-wit:

One 8x12 Russell Traction Engine No. 16832

(Give size and style) (Traction or portable)

....

One x Thresher No. _____complete with trucks, stackers, belts and all fixtures belonging to same _____
_____ _____
One _____ Stacker No. _____
One _____Self Feeder No. _____
(State kind)

_____ _____
One _____Saw Mill No. _____complete
(State Size) (State right or left hand)
with all saws, belts, and fixtures and _____.

The above described machinery manufactured by THE RUSSELL & COMPANY, of Massillon, Stark County, Ohio, or furnished by GEO. O. RICHARDSON MACHINERY Co., St. Joseph, Missouri. One _____Weigher No. ____ Manufactured by _____Also 1 30x50 Reaves Thresher and attachments. Also all increase of live stock if any named herein _____which said above described property, at the date of these presents is free and clear of liens, conveyances, incumbrances and levies, except _____

TO HAVE AND TO HOLD, all and singular, the said goods and chattels hereinbefore granted, bargained, and sold, or mentioned, unto the said mortgagee, its successors or assigns, forever.

PROVIDED ALWAYS, and these presents are upon the express condition that if the said mortgagor shall well and truly pay or cause to be paid to the mortgagee, its successors or assigns, the sum of $2800.00 Dollars, with interest according to the terms of two certain promissory notes, signed by said mortgager, payable to GEO. O. RICHARDSON MACHINERY Co., or order, as follows, viz:

One note dated 5-29 1920. Due 10-1-20 for _____$1400.00
One note dated 5-29 1920. Due 10-1-21 for_____$1400.00
One note dated _____19__ Due 191__ for____$_____
One note dated _____19__ Due 191__ for____$_____
One note dated _____19__ Due 191__ for____$_____
then this instrument shall be void, otherwise to remain in

full force; but, in case default shall be made in payment of the sum of money mentioned in either of the notes above referred to, or the interest thereon, or any part thereof, at the time limited for the payment of the same, or if the said mortgagors shall sell, assign or dispose of, or attempt to sell, assign or dispose of the whole or any part of the goods or chattels, or remove or attempt to remove the whole or any part thereof from the said County of Muskogee, without the written assent of the mortgagee, its successors or assigns, or shall leave exposed without shelter said goods or chattels, when not in use, or if the said mortgagee, its successors or assigns, shall deem themselves insecure, then the whole amount of said sum of money in said notes mentioned, which shall not have been paid, shall by reason thereof at once become due and payable, and then and from thenceforth it shall and may be lawful for said mortgagee, its successors, assigns or its authorized agents, to enter upon the premises of the said party of the first part, or any place or places where the said goods and chattels, or any part thereof, may be supposed to be, and take possession thereof, and remove the same to any place or places they may deem best, and to sell and dispose of the same for the best price or prices that can be obtained therefor, at public or private sale, giving ten days' notice (if said sale be public), by a written or printed notice, to be posted at five public places in the township, village or city, or vicinity, where the sale is to be made; and the person conducting such sale is hereby authorized to adjourn such sale from time to time, if deemed in his opinion necessary, until said property be sold and out of the money to arise from the sale thereof to pay all charges, costs and expenses of such removal and sale, and also all charges and fees of attorneys for services in such removal and sale, provided this mortgage is placed with an attorney of record in this state for collection and foreclosure and the name of such attorney appears on the foreclosure notice of sale, and also the said principal sums of money mentioned above and all interest charges thereon, applying credits on said notes in such order or manner as the

said GEO. O. RICHARDSON MACHINERY CO. may elect or determine (if so much there shall be), rendering the surplus money (if any there shall be) to said mortgagors; said mortgagor hereby waives all right and claim to damages by reason of seizure or sale of said property under the terms of this mortgage, regardless of the price for or the manner in which the same may be seized and sold, and if from any cause said property shall fail to satisfy said debt and interest aforesaid, said mortgagors hereby agree to pay the deficiency; and the said mortgagors hereby waive any appraisement and any and all relief from any valuation or appraisement laws. And in case the payment of the amount due on the note secured by this mortgage shall be made before the removal and sale of said goods and chattels but not until after the said notes and this mortgage shall have been placed in the hands of an attorney for collection, then said mortgagors shall also pay all reasonable charges and expenses of such attorney for collecting the amount due on said notes and this mortgage shall be held as security for the payment of said charges as well as the amount due on said notes.

IN WITNESS WHEREOF we have hereunto set our hands and seals this 29th day of May, 1920, A. D. 19__. Signed, Sealed and Delivered in the Presence of

W. C. Carroll (Seal)
T. A. Anthony (Seal)
S. E. Cozart (Seal)
G. W. Baldwin (Seal)
Call Ingram (Seal)

Two witnesses sign here:

R. N. Smith
E. A. Harris

Filed for record on the 7 day of June '20 8

A. M. Lewis F. Kipp, County Clerk
By Cybil Martin (Dep.)

(Seal)

CERTIFICATE OF TRUE COPY.

State of Oklahoma, County of Muskogee, ss.

I, Lewis F. Kipp, County Clerk, in and for the County and State aforesaid, do hereby certify that the within and foregoing is a full, true and correct copy of a certain instrument as the same appears on file in my office.

IN TESTIMONY WHEREOF, have hereunto set my hand and affixed the official of this office on this the 4 day of Nov., 1921.

(Signed) LEWIS F. KIPP,
County Clerk.

(Seal) By Mrs. Bashie McAlpin, Deputy.

NOTE BY REPORTER: Exhibit 1-B, being offered in evidence on behalf of the plaintiff and having been received in evidence by the court, without objections on behalf of the defendant; a full, true and correct copy of said Exhibit 1-B being in words and figures as follows, to wit:

"M. E. FULLENWIDER
Exhibit 1-B
OFFICIAL REPORTER

135983.

CHATTEL MORTGAGE.

KNOW ALL MEN BY THESE PRESENTS:

That William Kirksey, E. G. Kirksey & R. O. Oakley .....of the Township of ..... and of Muskogee County, in the State of Oklahoma, mortgagor....has this day bargained and sold, and does hereby

bargain, sell or mortgage unto GEO. O. RICHARDSON MACHINERY Co., an incorporated company of ST. JOSEPH, BUCHANAN COUNTY, MISSOURI, mortgagee, for the sum of Two Thousand and no-100 Dollars in hand paid, receipt whereof is hereby acknowledged, the following described personal property, to wit:

One 8x10 Russell Traction Engine No. 14356
(Give size and style) (Traction or Portable)
One Boss Knife Grinder

One 30x50 New Russell Thresher No. 25975 complete with trucks, stackers, belts and all fixtures belonging to same ----------

One Massillon Farmers Friend Stacker No. 8241
One Bo (Boss) Self Feeder No. 5237
(State kind)
One 150x8x4 Rubber belt 1-No. 2 Tank pump outfit
One 12 Bbl. Galv. Tank complete

(State size) (State right or left hand)

The above described machinery manufactured by The Russell & Company, of Massillon, Stark County, Ohio, or furnished by Geo. O. Richardson Machinery Co., St. Joseph, Missouri. One Hart Belt & Bucket Weigher N. 169808 Manufactured by ---------Also ----------
Also all increase of live stock if any named herein------ which said above described property, at the date of these presents, is free and clear of liens, conveyances, incumbrances and levies, except ----------

TO HAVE AND TO HOLD, all and singular, the said goods and chattels hereinbefore granted, bargained, and sold, or mentioned, unto the said mortgagee, its successors or assigns, forever.

PROVIDED ALWAYS, and these presents are upon the express condition that if the said mortgagor shall well and truly pay or cause to be paid to the mortgagee, its

successors or assigns, the sum of $2000.00 Dollars, with interest according to the terms of 4 certain promissory notes, signed by said mortgagor, payable to GEO. O. RICHARDSON MACHINERY CO., or order, as follows, viz:

One Note Dated 5-29 1920, Due 9-1-20 191..for....$150.00
One Note Dated 5-29 1920, Due 11-1-20 191..for..$850.00
One Note Dated 5-29 1920, Due 9-1-21 191..for....$150.00
One Note Dated 5-29 1920, Due 11-1-21 191..for...$850.00
One Note Dated.....191.., Due ....191..for..$.....

then this instrument shall be void, otherwise to remain in full force. But in case default shall be made in payment of the sum of money mentioned in either of the notes above referred to, or the interest thereon, or any part thereof, at the time limited for the payment of the same; or if the said mortgagors shall sell, assign or dispose of, or attempt to sell, assign or dispose of the whole or any part of the goods or chattels, or remove or attempt to remove the whole or any part thereof from the said County of Muskogee, without the written assent of the mortgagee, its successors or assigns; or shall leave exposed without shelter said goods or chattels, when not in use; or if the said mortgagee, its successors or assigns, shall deem themselves insecure, then the whole amount of said sum of money in said notes mentioned, which shall not have been paid, shall by reason thereof at once become due and payable, and then and from thenceforth it shall and may be lawful for said mortgagee, its successors, assigns or its authorized agents, to enter upon the premises of the said party of the first part, or any place or places where the said goods and chattels, or any part thereof, may be supposed to be, and take possession thereof and remove the same to any place or places they may deem best, and to sell and dispose of the same for the best price or prices that can be obtained therefor, at public or private sale, giving ten days' notice (if said sale be public), by a written or printed notice, to be posted at five public places in the township, village or city, or vicinity, where the sale is to be made; and the person conducting such sale is hereby authorized to adjourn such sale from time to time, if deemed

in his opinion necessary, until said property be sold and out of the money to arise from the sale thereof to pay all charges, costs and expenses of such removal and sale, and also all charges and fees of attorneys for services in such removal and sale, provided this mortgage is placed with an attorney of record in this state for collection and foreclosure and the name of such attorney appears on the foreclosure notice of sale, and also the said principal sums of money mentioned above and all interest charges thereon, applying credits on said notes in such order or manner as the said GEO R. RICHARDSON MACHINERY CO. may elect or determine (if so much there shall be), rendering the surplus money (if any there shall be) to said mortgagors; said mortgagor hereby waives all right and claim to damages by reason of seizure or sale of said property under the terms of this mortgage, regardless of the price for, or the manner in which the same may be seized and sold; and if from any cause said property shall fail to satisfy said debt and interest aforesaid, said mortgagors hereby agree to pay the deficiency; and the said mortgagors hereby waive any appraisement and any and all relief from any valuation or appraisement laws. And in case the payment of the amount due on the note secured by this mortgage shall be made before the removal and sale of said goods and chattels but not until after the said notes and this mortgage shall have been placed in the hands of an attorney for collection, then said mortgagors shall also pay all reasonable charges and expenses of such attorney for collecting the amount due on said notes and this mortgage shall be held as security for the payment of said charges as well as the amount due on said notes.

In Witness Whereof, we have hereunto set our hands and seal this 27th day of May, A. D. 1920.

Signed, Sealed and delivered in the presence of

Two witnesses sign here:
L. W. Duncan
R. N. Smith

WM. KIRKSEY (Seal)
E. G. KIRKSEY (Seal)
R. O. OAKLEY (Seal)

Filed for record on the 7 day of Jun '20 at 8 A.M.

Lewis F. Kipp, County Clerk.
(Seal) By Sybil Martin (Dept.)

CERTIFICATE OF TRUE COPY.

State of Oklahoma, County of Muskogee, ss.

I, Lewis F. Kipp, County Clerk, in and for the County and State aforesaid, do hereby certify that the within and foregoing is a full, true and correct copy of a certain instrument as the same appears on file in my office.

In Testimony Whereof, have hereunto set my hand and affixed the official of this office on this the 4 day of Nov. 1921.

(Signed) LEWIS F. KIPP,
County Clerk.

(Seal)

NOTE BY REPORTER: Exhibit 1-C, being offered in evidence on behalf of the plaintiff and having been received in evidence by the court, without objections on behalf of the defendant; a full, true and correct copy of said Exhibit 1-C being in words and figures as follows, to wit:

135984

M. E. Fullenwider,
Exhibit 1-C
Official Reporter.

CROP MORTGAGE.

This Indenture, Made the 29th day of May, in the year of our Lord one thousand nine hundred and twenty, between Call Ingram of the County of Muskogee, in the State of Oklahoma, by occupation....., mortgagor.... and party.. hereto of the first part, and Geo. O. Richardson Machinery Co., a corporation duly created, organized and doing business under the laws of the State

of Missouri, St. Joseph, Buchanan County, Missouri, Mortgagee, and party hereto of the second part.

Witnesseth, That the said Mortgagor__, for and in consideration of the sum of Fourteen Hundred and no-100 Dollars, gold coin of the United States, to him in hand paid, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the said party of the second part and to its successors and assigns forever, the following Oats crop crops, viz., the crop of 1920 consisting of Fifty acres of oats now being, standing and growing upon the certain piece or parcel of land lying and being in the said County of Muskogee, State of Oklahoma, and particularly described as follows, viz: Section Twenty-three Township Eight No. 1 Ogle. To have and to hold the before mentioned and described crop, subject to the provisions hereinafter contained.

Provided, nevertheless, that these presents are upon the express condition that if the said part__ of the first part, his heirs, executors, administrators, or assigns, shall well and truly pay, or cause to be paid, unto the said part__ of the second part, its successors, or assigns, the sum of Fourteen Hundred and no-100 Dollars, in United States gold coin, with interest thereon according to the terms and conditions of one certain promissory note__ made by T. A. Anthony, W. C. Carroll, S. E. Cozart, G. W. Baldwin, Call Ingram, James McKissie, and payable to said Geo. O. Richardson Machinery Co., and each described as follows:

One note dated ....., 190__ due 10-1-20, 19__ for $1400.00 with int. at 10 per cent. per annum till paid; all of the said notes being payable at Exchange National Bank, Muskogee, Oklahoma, Then and Thereupon these presents shall be void. And the party of the first part does hereby covenant and agree to and with the said party of the second part, its successors and assigns, that he will well and carefully tend, take care of and protect the said crop while growing and until fit for harvest,

and then faithfully, and without delay, harvest, thresh, clean and sack the same and deliver the same immediately into the possession of the said party of the second part or its assigns, to be by it held and disposed of, for the payment of the debt hereby secured; that in default of any or either of the above acts to be done by the said part.. of the first part, the said party of the second part or its assigns, may enter into the premises and take all necessary measures for the protection of said crop, and may retain possession thereof, and harvest, thresh, and sack the same; and all expenses so incurred, and all that may become necessary in the keeping and care of said crop, as well as the hauling, storing and delivery thereof, shall be secured by this mortgage, and shall be first payable in United States gold coin out of the money realized from the sale of said crop; that said party of the second part, or its assigns, shall and may at all times enter into the premises to view the same, or to take any measures necessary for the protection of said crop or its interest therein; and that upon harvesting thereof, it shall be entitled to the immediate possession of the same, and may haul and store the same at the expense of the said part.. of the first part, who for the purposes aforesaid, do make, constitute, and appoint the said party of the second part, or its assigns, ..., true and lawful attorney, with full power to enter upon said premises and take possession of said crop and take care of, protect, thresh, clean, and sack the same, in case of any default on part, of the covenants herein contained; and he do.. further authorize said party of the second part or its assigns, to take possession of said crop when harvested, to haul and store the same, to sell and dispose of the same, or any part thereof, at such time and times, and for such sum of money as it may deem proper and most for the mutual advantage and benefit of all concerned, and out of the proceeds of said sale, first to retain the costs and charges thereof and any and all expenses by the party of the second part incurred in the care and protection,

harvesting, hauling or storing of the same, and commission for selling the same; second, to apply the residue to the payment of said note or notes, rendering the overplus, if any there be, upon demand, to the said part-- of the first part or its assigns.

In Testimony Whereof, the said mortgagor-- have hereunto set------hand-- and seal-- the 29th day of May, in the year of our Lord one thousand nine hundred and twenty.

CALL INGRAM. (Seal)

Signed, Sealed and Delivered in Presence
of R. N. Smith, E. A. Harris.

Filed this 7 day of June '20 at 8:00 A. M. Lewis F. Kipp, County Clerk. By Sybil Martin, Deputy. (Seal)

CERTIFICATE OF TRUE COPY.

State of Oklahoma, County of Muskogee, ss.

I, Lewis F. Kipp, County Clerk, in and for the County and State aforesaid, do hereby certify that the within and foregoing is a full, true and correct copy of a certain instrument as the same appears on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the official of this office on this the 4 day of Nov., 1921.

(Signed) LEWIS F. KIPP, County Clerk.
By Mrs. Bashie McAlpin,
Deputy.

(Seal)

NOTE BY REPORTER: Exhibit 1-D, being offered in evidence on behalf of the plaintiff and having been received in evidence by the court, without objections on behalf of

the defendant; a full, true and correct copy of said Exhibit 1-D being in words and figures as follows, to wit:

"M. E. Fullenwider,
Exhibit 1-D
Official Reporter

135985

CROP MORTGAGE.

This Indenture, Made the 29th day of May, 1920, in the year of our Lord one thousand nine hundred and 20, between T. A. Anthony, of the County of Muskogee, in the State of Oklahoma, by occupation....., mortgagor.. and party hereto of the first part, and Geo. O. Richardson Machinery Co., a corporation duly credited, organized and doing business under the laws of the State of Missouri, St. Joseph, Buchanan County, Missouri, mortgagee, and party hereto of the second part.

Witnesseth, That the said Mortgagor for and in consideration of the sum of Fourteen Hundred and no-100 Dollars, gold coin of the United States, to him in hand paid, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the said party of the second part, and to its successors and assigns, forever, the following eighty acres oats crop viz, the crop of 1920, now being, standing and growing upon the certain piece or parcel of land lying and being in the said County of Muskogee, State of Oklahoma, and particularly described as follows, viz:

Section Eighteen Township Eight No. 2 Ogle

To hand and to hold the before mentioned and described crop, subject to the provisions hereinafter contained.

Provided, Nevertheless, that these presents are upon the express condition that if the said party of the first part, his heirs, executors, administrators, or assigns, shall well and truly pay, or cause to be paid, unto the said party of the second part, its successors or assigns, the

sum of Fourteen Hundred and no-100 Dollars, in United States gold coin, with interest thereon according to the terms and conditions of one certain promissory note, made by T. A. Anthony, W. C. Carroll, S. E. Cozart, T. W. Baldwin and Call Ingram & James McKissie and payable to said Geo. O. Richardson Machinery Co., and each described as follows:

One note dated----------, 190--, due 19-- for $1400.00 with int. at 10 per cent per annum till paid; all of the said notes being payable at Exchange National Bank, Muskogee, Okla. Then and Thereupon these presents shall be void. And the party of the first part does hereby covenant and agree to and with the said party of the second part, its successors and assigns, that he will well and carefully tend, take care of and protect the said crop while growing and until fit for harvest, and then faithfully, and without delay, harvest, thresh, clean and sack the same, and deliver the same immediately into the possession of the said party of the second part or its assigns, to be by it held and disposed of, for the payment of the debt hereby secured; that in default of any or either of the above acts to be done by the said party of the first part, the said party of the second part, or its assigns, may enter into the premises and take all necessary measures for the protection of said crop, and may retain possession thereof, and harvest, thresh and sack the same; and all expenses so incurred and all that may become necessary in the keeping and care of said crop, as well as the hauling, storing, and delivery thereof, shall be secured by this mortgage, and shall be first payable in United States gold coin out of the money realized from the sale of said crop; that said party of the second part, or its assigns, shall and may at all times enter into the premises to view the same, or to take any measures necessary for the protection of said crop or its interest therein; and that upon harvesting thereof, it shall be entitled to the immediate possession of the same, and may haul and store the same at the expense of the said part--of the first part, who for the

purposes aforesaid do__make, constitute, and appoint the said party of the second part, or its assigns, his true and lawful attorney, with full power to enter upon said premises and take possession of said crop and take care of, protect, thresh, clean, and sack the same, in case of any default on ____ part of the covenants, herein contained, and he does further authorize said party of the second part or its assigns, to take possession of said crop when harvested, to haul and store the same, to sell and dispose of the same, or any part thereof, at such time and times, and for such sum of money as it may deem proper, and most for the mutual advantage and benefit of all concerned, and out of the proceeds of said sale, first to retain the costs and charges thereof and any and all expenses by the party of the second part, incurred in the care and protection, harvesting, hauling or storing of the same, and commission for selling the same; second, to apply the residue to the payment of said note or notes, rendering the overplus, if any there be, upon demand, to the said part__ of the first part or _____ assigns.

In Testimony Whereof, The said mortgagor__ have hereunto set__ hand and seal the 29th day of May, in the year of our Lord one thousand nine hundred and twenty.

T. A. ANTHONY. (Seal)

Signed, Sealed and Delivered in Presence
of R. N. Smith, E. A. Harris.

Filed for record on the 7 day of June '20 at 8:00 A. M. Lewis F. Kipp. By Sybil Martin, Deputy. (Seal)

CERTIFICATE OF TRUE COPY.

State of Oklahoma, County of Muskogee, ss.

I, Lewis F. Kipp, County Clerk, in and for the County and State aforesaid, do hereby certify that the within and foregoing is a full, true and correct copy of a certain instrument as the same appears on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the official of this office on this the 4 day of Nov., 1921.

(Signed) LEWIS F. KIPP,
County Clerk.
By Mrs. Bashie McAlpin,
Deputy.

(Seal)

NOTE BY REPORTER: Exhibit 1-E, being offered in evidence on behalf of the plaintiff and having been received in evidence by the court, without objections on behalf of the defendant; a full, true and correct copy of said Exhibit 1-E being in words and figures as follows, to-wit:

"M. E. Fullenwider,
Exhibit 1-E
Official Reporter

135986

CROP MORTGAGE.

This Indenture, Made the 29th day of May, in the year of our Lord one thousand nine hundred and twenty, between G. W. Baldwin of the County of Muskogee, in the State of Oklahoma by occupation----------, mortgagor----- and party-- hereto of the first part, and Geo. O. Richardson Machinery Co., a corporation duly created, organized and doing business under the laws of the State of Missouri, St. Joseph, Buchanan County, Missouri, mortgagee, and party hereto of the second part.

Witnesseth, That the said Mortgagor--, for and in consideration of the sum of Fourteen Hundred and no/100 Dollars, Gold Coin of the United States, to him in hand paid, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the said party of the second part and to its successors and assigns forever, the following oats crop, viz, the crop of 1920 consisting of thirty acres of oats now being, stand-

ing and growing upon the certain piece or parcel of land lying and being in the said County of Muskogee, State of Oklahoma, and particularly described as follows, viz:

Section Twenty Township Eight No. 2 Ogle.

To have and to hold the before mentioned and described crop, subject to the provisions hereinafter contained.

Provided, Nevertheless, that these presents are upon the express condition that if the said part.. of the first part, his heirs, executors, administrators, or assigns, shall well and truly pay, or cause to be paid, unto the said part.. of the second part, its successors, or assigns, the sum of Fourteen Hundred and no-100 Dollars, in United States gold coin, with interest thereon according to the terms and conditions of one certain promissory note.. made by T. A. Anthony, W. C. Carroll, S. E Cozart, G. W. Baldwin and Call Ingram and James McKissie and payable to said Geo. O. Richardson Machinery Co., and each described as follows:

One Note dated..... 190.. due 10-1-20.. 19.. for $1400.00 with int. at 10 per cent per annum till paid; all of the said notes being payable at Exchange National Bank, Muskogee, Oklahoma, Then and Thereupon these presents shall be void. And the party of the first part does hereby covenant and agree to and with the said party of the second part, its successors and assigns, that he will well and carefully tend, take care of and protect the said crop while growing and until fit for harvest, and then faithfully, and without delay, harvest, thresh, clean and sack the same, and deliver the same immediately into the possession of the said party of the second part or its assigns, to be by it held and disposed of, for the payment of the debt hereby secured; that in default of any or either of the above acts to be done by the said part.. of the first part, the said party of the second part or its assigns, may enter into the premises and take all necessary measures for the protection of said crop, and may retain possession thereof, and harvest, thresh, and sack

the same; and all expenses so incurred, and all that may become necessary in the keeping and care of said crop, as well as the hauling, storing and delivery thereof, shall be secured by this mortgage, and shall be first payable in United States gold coin out of the money realized from the sale of said crop; that said party of the second part, or its assigns, shall and may at all times enter into the premises to view the same, or to take any measures necessary for the protection of said crop or its interest therein; and that upon harvesting thereof, it shall be entitled to the immediate possession of the same, and may haul and store the same at the expense of the said part-- of the first part, who for the purposes aforesaid, do make, constitute, and appoint the said party of the second part, or its assigns -------- true and lawful attorney, with full power to enter upon said premises and take possession of said crop and take care of, protect, thresh, clean, and sack the same, in case of any default on part, of the covenants herein contained; and he do-- further authorize said party of the second part or its assigns, to take possession of said crop when harvested, to haul and store the same, to sell and dispose of the same, or any part thereof, at such time and times, and for such sum of money as it may deem proper and most for the mutual advantage and benefit of all concerned, and out of the proceeds of said sale, first to retain the costs and charges thereof and any and all expenses by the party of the second part incurred in the care and protection, harvesting, hauling or storing of the same, and commission for selling the same; second, to apply the residue to the payment of said note or notes, rendering the overplus, if any there be, upon demand, to the said part-- of the first part or its assigns.

In Testimony Whereof, the said mortgagor-- have hereunto set---- hand-- and seal-- the 29th day of May, in the year of our Lord one thousand nine hundred and twenty.

G. W. BALDWIN (Seal)

Signed, Sealed and Delivered in Presence
of R. N. Smith, E. A. Harris.

Filed this 7 day of June '20 at 8:00 A. M. Lewis F. Kipp, County Clerk. By Sybil Martin, Deputy. (Seal)

CERTIFICATE OF TRUE COPY.

State of Oklahoma, County of Muskogee, ss.

I, Lewis F. Kipp, County Clerk, in and for the County and State aforesaid, do hereby certify that the within and foregoing is a full, true and correct copy of a certain instrument as the same appears on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the official of this office on this the 4 day of Nov., 1921.

(Signed) LEWIS F. KIPP,
County Clerk.
By Mrs. Bashie McAlpin,
(Seal) Deputy.

NOTE BY REPORTER: Exhibit 1-F, being offered in evidence on behalf of the plaintiff and having been received in evidence by the court, without objections on behalf of the defendant; a full, true and correct copy of said Exhibt 1-F being in words and figures as follows, to-wit:

"M. E. Fullenwider,
Exhibit 1-F
Official Reporter

135987

CROP MORTGAGE.

This Indenture, Made the 29th day of May, in the year of our Lord one thousand nine hundred and twenty between W. C. Carroll of the County of Muskogee in the State of Oklahoma by occupation....., mortgagor and party hereto of the first part, and Geo. O. Richardson

Machinery Co., a corporation duly created, organized and doing business under the laws of the State of Missouri, Buchanan County, St. Joseph, Mo. Mortgagee, and party hereto of the second part.

Witnesseth, That the said mortgagor, for and in consideration of the sum of Fourteen Hundred and no-100 Dollars, gold coin of the United States, to him in hand paid, the receipt whereof is hereby acknowledged, does by these presents, grant, bargain, sell and convey unto the said party of the second part, and to its successors and assigns forever, the following wheat and oats crop, viz, the crop of 1920 consisting of eighty acres of oats and twelve and one-half acres of wheat now being, standing and growing upon the certain piece or parcel of land lying and being in the said county of Muskogee, State of Oklahoma, and particularly described as follows, viz:

Section Nineteen Township Eight No. 2 Ogle.

To have and to hold the before mentioned and described crop, subject to the provisions hereinafter contained.

Provided, Nevertheless, that these presents are upon the express condition that if the said party of the first part, his heirs, executors, administrators, or assigns, shall well and truly pay, or cause to be paid, unto the said party of the second part, its successors or assigns, the sum of fourteen hundred and no-100 dollars, in the United States gold coin, with interest thereon according to the terms and conditions of one certain promissory note made by T. A. Anthony, W. C. Carroll, S. E. Cozart, Y. W. Baldwin and Call Ingram and James McKissie and payable to said Geo. O. Richardson Machinery Co. and each described as follows:

One note dated 190__ due 10-1-20__ 19__ for $1400.00 with int. at 10 per cent per annum till paid; all of the said notes being payable at Exchange National Bank Muskogee, Oklahoma. Then and Thereupon these presents shall be void. And the party of the first part do hereby

covenant and agree to and with the said part.. of the second part, its successors and assigns, that it will well and carefully tend, take care of and protect the said crop while growing and until fit for harvest, and then faithfully, and without delay, harvest, thresh, clean and sack the same, and deliver the same immediately into the possession of the said party of the second part or its assigns, to be by it held and disposed of, for the payment of the debt hereby secured; that in default of any or either of the above acts to be done by the said part.. of the first part, the said party of the second part or its assigns, may enter into the premises and take all necessary measures for the protection of said crop, and may retain possession thereof, and harvest, thresh and sack the same; and all expenses so incurred, and all that may become necessary in keeping and care of said crop, as well as the hauling, storing and delivery thereof, shall be secured by this mortgage, and shall be first payable in United States gold coin out of the money realized from the sale of said crop; that said party of the second part, or its assigns, shall and may at all times enter into the premises to view the same, or to take any measures necessary for the protection of said crop or its interest therein and that upon harvesting thereof, it shall be entitled to the immediate possession of the same, and may haul and store the same at the expense of the said part.. of the first part, who for the purposes aforesaid, do make, constitute, and appoint the said party of the second part, or its assigns true and lawful attorney, with full power to enter upon said premises and take possession of said crop and take care of, protect, thresh, clean, and sack the same, in case of any default on part.. of the covenants herein contained and he do..further authorize said party of the second part or its assigns to take possession of said crop when harvested, to haul and store the same, to sell and dispose of the same, or any part thereof, at such time and times, and for such sum of money as it may deem proper and most for the mutual advantage and benefit of all con-

cerned, and out of the proceeds of said sale, first to retain costs and charges thereof and any and all expenses by the party of the second part incurred in the care and protection, harvesting, hauling or storing of the same, and commission for selling the same; second to apply the residue to the payment of said note or notes, rendering the overplus, if any there be, upon demand, to the said part-- of the first part or its assigns.

In Testimony Whereof, the said mortgagor-- have hereunto set-- hand-- and seal-- the 29th day of May, in the year of our Lord one thousand nine hundred and twenty.

W. C. CARROLL (Seal)

Signed, Sealed and Delivered in Presence
of R. N. Smith, E. A. Harris.

Filed this 7 day of June '20 at 8:00 A. M. Lewis F. Kipp, County Clerk. By Sybil Martin, Deputy. (Seal)

CERTIFICATE OF TRUE COPY.

State of Oklahoma, County of Muskogee, ss.

I, Lewis F. Kipp, County Clerk, in and for the County and State aforesaid, do hereby certify that the within and foregoing is a full, true and correct copy of a certain instrument as the same appears on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the official of this office on this the 4 day of Nov., 1921.

(Signed) LEWIS F. KIPP,
County Clerk.
By Mrs. Bashie McAlpin,
Deputy.

(Seal)

NOTE BY REPORTER: Exhibit 1-G, being offered in evi-

dence on behalf of the plaintiff and having been received in evidence by the court, without objections on behalf of the defendant; a full, true and correct copy of said Exhibit 1-G being in words and figures as follows, to-wit:

"M. E. Fullenwider,
Exhibit 1-G
Official Reporter

135988

CROP MORTGAGE.

This Indenture, Made the 29th day of May, in the year of our Lord one thousand nine hundred and twenty, between S. E. Cozart of the County of Muskogee, in the State of Oklahoma by occupation....., mortgagor.. and party.. hereto of the first part, and Geo. O. Richardson Machinery Co., a corporation duly created, organized and doing business under the laws of the State of Missouri, St. Joseph, Buchanan County, Missouri, mortgagee, and party hereto of the second part.

Witnesseth, That the said mortgagor.., for and in consideration of the sum of fourteen hundred and no-100 Dollars, gold coin of the United States, to him in hand paid, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the said party of the second part and to its successors and assigns forever, the following oats crop, viz, the crop of 1920 consisting of forty acres of oats now being, standing and growing upon the certain piece or parcel of land lying and being in the said County of Muskogee, State of Oklahoma, and particularly described as follows, viz:

Section Nineteen Township Eight No. 2 Ogle.

To have and to hold the before mentioned and described crop, subject to the provisions hereinafter contained.

Provided, Nevertheless, that these presents are upon the express condition that if the said part.. of the first part, his heirs, executors, administrators, or assigns, shall well and truly pay, or cause to be paid, unto the said

part.. of the second part, its successors, or assigns, the sum of fourteen hundred and no-100 Dollars, in United States gold coin, with interest thereon according to the terms and conditions of one certain promissory note.. made by T. A. Anthony, W. C. Carroll, S. E. Cozart, T. W. Baldwin, and Call Ingram and James McKissie and payable to said Geo. O. Richardson Machinery Co., and each described as follows:

One note dated .... 190.. due 10-1-20.. 19.. for $1400.00 with int. at 10 per cent per annum till paid; all of the said notes being payable at Exchange National Bank, Muskogee, Oklahoma, Then and Thereupon these presents shall be void. And the party of the first part does hereby covenant and agree to and with the said party of the second part, its successors and assigns, that he will well and carefully tend, take care of and protect the said crop while growing and until fit for harvest, and then faithfully, and without delay, harvest, thresh, clean and sack the same, and deliver the same immediately into the possession of the said party of the second part or its assigns, to be by it held and disposed of, for the payment of the debt hereby secured; that in default of any or either of the above acts to be done by the said part.. of the first part, the said party of the second part or its assigns, may enter into the premises and take all necessary measures for the protection of said crop, and may retain possession thereof, and harvest, thresh, and sack the same; and all expenses so incurred, and all that may become necessary in the keeping and care of said crop, as well as the hauling, storing and delivery thereof, shall be secured by this mortgage, and shall be first payable in United States gold coin out of the money realized from the sale of said crop; that said party of the second part, or its assigns, shall and may at all times enter into the premises to view the same, or to take any measures necessary for the protection of said crop or its interest therein; and that upon harvesting thereof, it shall be entitled to the immediate possession of the same, and may haul and

store the same at the expense of the said part.. of the first part, who for the purposes aforesaid, do make, constitute and appoint the said party of the second part, or its assigns ..... true and lawful attorney, with full power to enter upon said premises and take possession of said crop and take care of, protect, thresh, clean, and sack the same, in case of any default on part, of the covenants herein contained; and he do.. further authorize said party of the second part or its assigns, to take possession of said crop when harvested, to haul and store the same, to sell and dispose of the same, or any part thereof, at such time and times, and for such sum of money as it may deem proper and most for the mutual advantage and benefit of all concerned, and out of the proceeds of said sale, first to retain the costs and charges thereof and any and all expenses by the party of the second part incurred in the care and protection, harvesting, hauling or storing of the same, and commission for selling the same; second, to apply the residue to the payment of said note or notes, rendering the overplus, if any there be, upon demand, to the said part.. of the first part or its assigns.

In Testimony Whereof, the said mortgagor.. have hereunto set.. hand.. and seal.. the 29th day of May, in the year of our Lord one thousand nine hundred and twenty.

S. E. COZART (Seal)

Signed, Sealed and Delivered in Presence
of R. N. Smith, E. A. Harris.

Filed this 7 day of June '20 at 8:00 A. M. Lewis F. Kipp, County Clerk. By Sybil Martin, Deputy. (Seal)

CERTIFICATE OF TRUE COPY.

State of Oklahoma, County of Muskogee, ss.

I, Lewis F. Kipp, County Clerk, in and for the County and State aforesaid, do hereby certify that the within

and foregoing is a full, true and correct copy of a certain instrument as the same appears on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the official of this office on this the 4 day of Nov., 1921.

(Signed) LEWIS F. KIPP,
County Clerk.
By Mrs. Bashie McAlpin,
Deputy.

(Seal)

NOTE BY REPORTER: Exhibit 1-H, being offered in evidence on behalf of the plaintiff and having been received in evidence by the court, without objections on behalf of the defendant; a full, true and correct copy of said Exhibit 1-H being in words and figures as follows, to wit:

"M. E. Fullenwider,
Exhibit 1-H
Official Reporter

141490

CHATTEL MORTGAGE

Know all men by these presents:

That M. R. McGahey and G. E. Blackstone of the Township of _____ and of Muskogee County, in the State of Oklahoma Mortgagor.. have this day bargained and sold, and do.. hereby bargain sell or mortgage unto Geo. O. Richardson Machinery Co., an incorporated company of St. Joseph, Buchanan County, Missouri, mortgagee, for the sum of fourteen hundred ninety and no-100 Dollars, in hand paid, receipt whereof is hereby acknowledged, the following described personal property, to-wit:

One _____ Russell _____ Engine No...
(Give size and style) (Traction or portable)

One 18x34 Russell Junior Thresher No. 26010 complete

with trucks, stackers, belts and all fixtures belonging to same; One Massillon Farmers Friend Stacker No. 8504; One Boss Self Feeder No. 5260; One 1-125x6"x4 ply Rubber belt; One ..... Saw Mill No..... Complete
(State size) (State right or left hand)
with all saws, belts, and fixtures and .....
.....

The above described machinery manufactured by The Russell & Company, of Massillon, Stark County, Ohio, or furnished by Geo. O. Richardson Machinery Co., St. Joseph, Missouri. One Hart Junior Eight No. 171118 manufactured by.... Also .....
Also all increase in live stock if any named herein.....
which said above described property, at the date of these presents, is free and clear of liens, conveyances, incumbrances and levies, except .....

To Have and to Hold, all and singular, the said goods and chattels hereinbefore granted, bargained, and sold, or mentioned, unto the said mortgagee, its successors or assigns, forever.

Provided Always, and these presents are upon the express condition that if the said mortgagor shall well and truly pay or cause to be paid to the mortgagee, its successors or assigns, the sum of $1430.00 Dollars, with interest according to the terms of five certain promissory notes, signed by said mortgagor, payable to Geo. O. Richardson Machinery Co., or order, as follows, viz:

One Note Dated Dec. 7, 1920, Due 6-1-21 for..$500.00
One Note Dated Dec. 7, 1920, Due 9-1-21 for..$125.00
One Note Dated Dec. 7, 1920, Due 10-1-21 for..$370.00
One Note Dated Dec. 7, 1920, Due 9-1-22 for..$125.00
One Note Dated Dec. 7, 1920, Due 10-1-22 for..$370.00

then this instrument shall be void, otherwise to remain in full force. But in case default shall be made in the payment of the sum of money mentioned in either of the notes above referred to, or the interest thereon, or any part thereof, at the time limited for the payment of the

same; or if the said mortgagors shall sell, assign or dispose of, or attempt to sell, assign or dispose of the whole or any part of the goods or chattels; or remove or attempt to remove the whole or any part thereof from the said County of Muskogee, without the written assent of the mortgagee, its successors or assigns; or shall leave exposed without shelter said goods or chattels, when not in use; or if the said mortgagee, its successors or assigns, shall deem themselves insecure, then the whole amount of said sum of money in said notes mentioned, which shall not have been paid, shall by reason thereof at once become due and payable, and then and from thenceforth it shall and may be lawful for said mortgagee, its successors, assigns or its authorized agents, to enter upon the premises of the said party of the first part, or any place or places where the said goods and chattels, or any part thereof, may be supposed to be, and take possession thereof, and remove the same to any place or places they may deem best, and to sell and dispose of the same for the best price or prices that can be obtained therefor, at public or private sale, giving 10 days' notice (if said sale be public), by a written or printed notice to be posted at five public places in the township, village or city, or vicinity, where the sale is to be made; and the person conducting such sale is hereby authorized to adjourn such sale from time to time, if deemed in his opinion necessary, until said property be sold and out of the money to arise from the sale thereof to pay all charges, costs and expenses of such removal and sale, and also all charges and fees of attorneys for services in such removal and sale, provided this mortgage is placed with an attorney of record in this state for collection and foreclosure and the name of such attorney appears on the foreclosure notice of sale, and also the said principal sums of money mentioned above and all interest charges thereon, applying credits on said notes in such order or manner as the said Geo. R. Richardson Machinery Co. may elect or determine (if so much there shall be), rendering the surplus money

(if any there shall be) to said mortgagors; said mortgagor hereby waives all right and claim to damages by reason of seizure or sale of said property under the terms of this mortgage, regardless of the price for, or the manner in which the same may be seized and sold; and if from any cause said property shall fail to satisfy said debt and interest aforesaid, said mortgagors hereby agree to pay the deficiency; and the said mortgagors hereby waive any appraisement and any and all relief from any valuation or appraisement laws. And in case the payment of the amount due on the note secured by this mortgage shall be made before the removal and sale of said goods and chattels but not until after the said notes and this mortgage shall have been placed in the hands of an attorney for collection, then said mortgagors shall also pay all reasonable charges and expenses of such attorney for collecting the amount due on said notes and this mortgage shall be held as security for the payment of said charges as well as the amount due on said notes.

In Witness Whereof, we have hereunto set our hand.. and seal.. this 7th day of Dec., 1920, A. D. 19...

Signed, Sealed and Delivered in the presence of

Blackstone & McGahey (Seal)
By McG

Two witnesses sign here:

E. A. Harris,
R. N. Smith.

Filed for record on the 11th day of Dec '20 8.40 A. M. Lewis F. Kipp, County Clerk, by Vernon Lofton, Deputy. (Seal)

CERTIFICATE OF TRUE COPY.

State of Oklahoma, County of Muskogee, ss.

I, Lewis F. Kipp, County Clerk, in and for the County and State aforesaid, do hereby certify that the within

and foregoing is a full, true and correct copy of a certain instrument as the same appears on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the official of this office on this the 4 day of Nov., 1921.

(Signed) LEWIS F. KIPP,
County Clerk.
By Mrs. Bashie McAlpin,
Deputy.

(Seal)

Q. Now, those mortgages were taken by your company and were for record there; what sort of indebtedness did they represent, Mr. Myers?

A. They represented the purchase price of the machinery that they had bought.

Q. Yes; and those were deferred, those mortgages were securing deferred payments to your company?

A. Yes, sir.

Q. Now, I notice the recitals in the mortgage show that note secured thereby, some of them were made payable before the institution of this suit and some following, to be after the institution of this suit; that correct, was it?

A. I presume so.

Q And, they are payable to the order of your bank at local banks in the State of Oklahoma?

A. It is always our custom to make them payable wherever the customer prefers them, they send them for collection; as a matter of fact, they are payable to us at our home office at St. Joseph, but, the place of payment is wherever it is convenient for them to pay.

Q. Well, its placed right in the mortgage?

A. Yes.

Q. Pay to,— (counsel interrupted).

A. Not just in, in the mortgage at all.

Q. Well, the mortgage then recites where payable?

A. No, it doesn't recite where payable at all.

Q. I know, I have certified copies here; I can see them, these mortgages.

A. All right. You won't find it there (witness indicating).

BY MR. MOORE: I thought we better offer in evidence these mortgages.

BY MR. PINSON: Well, we can admit that certain of the mortgages referred to and described the notes as being payable to local banks.

BY WITNESS: Yes, we admit that the notes are payable.

BY MR. MOORE: To local banks?

BY WITNESS: Why, certainly, we don't deny that.

Q. And some of them were delivered to pay before this service was reached and some afterwards?

A. We have been doing business in Oklahoma on that basis.

Q. I mean, these machines sold in 1920, they are in Muskogee County?

A. I didn't hear that.

Q. You admit then, these notes are payable according to the recitals in the mortgages?

A. Why, certainly.

Q. Well now, Mr. Myers, when you occasionally would make a sale of a machine, that would not be paid for, you would take a note back from the purchaser, would you not?

A. Yes, sir.

Q. In such circumstances of that character; what was done with those machines after they would take them back from the purchaser for failure to pay, or, that wouldn't ultimately receive the machines that were shipped to them?

A. Why, probably sent back to a branch office or to St. Joseph for rebuilding purposes.

Q. And, occasionally, resell them in Oklahoma?

A. And, occasionally, we often resell them after that or resell them where they were.

Q. That occurred in 1920?

NOTE BY REPORTER: Owing to change of transcribers, the pages did not come out evenly and the answer appears on the following page and in regular sequence.

A. No, I don't know any case of that, now.

Q. But, your general custom during the time you were doing business, that you often would re-sell, you sold it around here?

A. Yes, sir.

Q. And, that was a continuing business from the time you started business in Oklahoma up to the time of this suit?

A. Yes, that's true.

MR. MOORE: That's all.

RE-DIRECT EXAMINATION.

BY MR. PINSON: Mr. Myers, a reference has been made to the two machines that the Spaulding Implement Company had on hand at Vinita; do you remember how they happened to receive those machines, about, in the year approximately, 1920, I think you said?

A. Well, as I stated in the answer to the former question, they had part of a carload sold and thought they had the entire carload sold and on account of the saving in freight by shipping four in a car, they ordered four machines but they—the shipment was delayed and it didn't arrive there in time to dispose of the other two machines in the fall of 1920 and they were obliged to carry them over.

Q. Now, aside from a matter of that character, of a machine which was returned to you or redelivered to you by the purchaser because of his inability to make the payment contemplated, or, I mean occasionally sent them, it would simply be up to you to store any machines within the State of Oklahoma, for sale?

A. No, we never, except on these consignments contract with the dealers, that's all, and very seldom then.

Q. Now, when were those, Mr. Myers, when were they, your first consignment contract?

A. Well, really, we never did consign more than one machine to any dealer until 1921.

Q. Well, now, we will not refer to anything that has occurred since 1920, but, the consignment contract to which you referred to the dealer of one machine at a time, is the instance which you have referred to, is it?

A. Yes.

Q. And, no other instances of that character have occurred?

A. I don't recall it, now.

Q. Except, what you have mentioned.

A. I know, it is not our practice to do so.

Q. Your dealers, some of your dealers desire a sample and others desire to sell from the catalogue, is that correct?

A. Well, they all would like to do it sometimes, but we won't furnish them.

Q. You won't always furnish them?

A. Yes.

Q. You only furnish them to those who— (witness interrupts counsel)?

A. Where it seems almost sure that they will sell them, yes.

Q. That is the proposition that was advised to you?

A. Yes.

Q. And you rely on their statement as to that, and ship them a machine?

A. Yes.

Q. Now, as I understand you, that machine is charged to them and is shipped to them by contract at the St. Joseph office?

A. Yes.

Q An they pay the freight?

A. Yes.

Q. They are sold; if sold, they are sold by contract which goes back to your office?

A. Yes.

Q. The second hand machinery which is sold, as you

referred to, that is where it is taken back and sold this way; is that covered by the contract which has been introduced in evidence, the manner in selling such machinery?

A. No. Well, that sale contract would apply to either new or second-hand, in any event.

Q. I see.

A. In any event; and, in order for the second-hand machinery, it would have to come in to us and be accepted at our home office.

Q. Regardless of whether it is second-hand machinery which is ordered, or regardless of whether it is second-hand machinery which happened to be turned back?

A. Yes; yes.

Q. And the sale or resale of that machinery is accomplished by some salesman who gets a commission then for that; is that correct?

A. Yes.

Q. And that commission is paid to him after the expenses of the contract and the payment of the part of the machinery?

A. Yes.

MR. EVEREST: Object to that as leading and suggestive.

MR. PINSON: Well, we are leading, Your Honor, please; I am trying to save a little time.

MR. EVEREST: Counsel is so frank about it, we withdraw the objection (laughter).

MR. PINSON: We offer in evidence the certified copy. No objection to our offering it?

MR. EVEREST: No, sir, that's all right, Mr. Pinson.

MR. PINSON: The certified copy of what has been termed the "Withdrawal", of the Secretary of State, of the Articles of Withdrawal, and ask that it be marked defendans' exhibit No. 2.

NOTE BY REPORTER: At this point Mr. Pinson hands to the reporter an instrument which is marked and identified as exhibit No. 2.

MR. PINSON: This, Your Honor please, I desire to ar-

gue that phase of it with regard to it, and so I will read it at this time.

NOTE BY REPORTER: Exhibit No. 2, having been offered on behalf of the defendant and having been received in evidence by the Court, without objection on behalf of the plaintiff, a full, true and correct copy of said exhibit No. 2 being in words and figures as follows, to wit:

EXHIBIT 2.

M. E. Fullenwider,
Official Reporter.

State of Oklahoma, Department of State. Joe S. Morris, Secretary of State. Great Seal of the State of Oklahoma, 1907.

To All to Whom These Presents Shall Come, Greeting:

I, Joe S. Morris, Secretary of State, of the State of Oklahoma, do hereby certify that the following and hereto attached is a true copy of

> Articles of Withdrawal of Geo. O. Richardson Machinery Company. Filed January 17th, 1917. Appointment of Agent for Geo. O. Richardson Machinery Co. Filed April 21, 1903. Articles of Incorporation of Geo. O. Richardson Machinery Co. of Missouri, filed April 21, 1903.

the original of which is now on file and a matter of record in this office.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of State.

Done at the City of Oklahoma City, this first day of November, A. D. 1921.

JOE S. MORRIS, Secretary of State.

(Seal)

C. J. KENDLE,
Ass't. Secretary of State.

State of Missouri, County of Buchanan, ss.

John R. Myers, of lawful age, having been first duly sworn, says that he is the President and Treasurer of the Geo. O. Richardson Machinery Co., a corporation under the laws of the State of Missouri, engaged in the sale of machinery and having its principal office in St. Joseph, Buchanan County, Missouri; that said corporation in the year of 1903, contemplating the doing of business in the State (then Territory) of Oklahoma, complied with the foreign corporation laws of said territory, appointing Charles E. Riney of Blackwell, Kay County, Oklahoma, its agent for the acceptance of service, all of which is evidenced by the duly executed certificate of the Secretary of said Territory, dated the 21st day of April, 1903.

Affiant further says that said corporation is not now maintaining and for some time past has not maintained an office or stock of machinery in the State of Oklahoma, and does not contemplate doing business in said State, except by occasional sales on orders not valid until accepted at its Home Office, for machinery to be shipped into said State after acceptance of said orders; which transactions, as he understands, come strictly under the interstate commerce clause of the Federal Constitution.

By this affidavit and statement he therefore revokes the authority of said Charles E. Riney as agent for said corporation and further revokes and withdraws its former compliance with the foreign corporation laws of said Territory of Oklahoma.

JOHN R. MYERS.

(Corporate Seal)

Sworn to and Subscribed before me, a Notary Public within and for Buchanan County, at St. Joseph, Missouri, this 7th day of January, 1911.

LOUIS E. TRACHSEL,

(Seal) Notary Public.

My Commission expires July 8th, 1913.

No. 7213. Articles of Withdrawal from State. Affidavit. Geo. O. Richardson Machinery Co., St. Joseph, Mo. Secretary's Memorandum: Oklahoma City, State of Oklahoma. Secretary's office. This instrument was filed for record this 17th day of January, A. D. 1911, at 3 o'clock P. M. Recorded in Corporation Record No. 28, page 9. Ben. F. Harrison, Secretary of State. $1.00.

APPOINTMENT OF AGENT.

Know All Men By These Presents:

That The Geo. O. Richardson Machinery Co., of Saint Joseph in the State of Oklahoma, does hereby nominate and appoint for itself and successors the following named persons, to wit: Charles E. Riney, whose residence is at Blackwell, in the County of Kay, as its true and lawful Agent and Attorney within the Territory of Oklahoma, as required by Section 3 of Article 21, Chapter 17, of the Statutes of Oklahoma Territory for 1893.

And said Company does hereby authorize the aforesaid person to acknowledge service of process for and in behalf of said Company in said Territory, consenting that such service of process, mense, as final upon such Attorney, shall be taken and held to be as valid as if served upon the Company according to the laws of the Territory of Oklahoma, or any other Territory or State, and waiving all claims of right or error by reason of such acknowledgment of service.

Witness the seal of the said Geo. O. Richardson Machinery Company, and the official signature of the President and Secretary thereof, at St. Joseph, in the State of Missouri, this 18th day of April, 1903.

R. F. MAXWELL, President.
W. M. BELLER, Secretary.

(Corporate Seal)

No. 6809. Geo. O. Richardson Machinery Co. Terri-

tory of Oklahoma, Secretary's office. This instrument was filed in this office on this 21st day of April, A. D. 1903, and duly recorded in Corp. Record No. 10, page 587. Wm. Grimes, Secretary of State.

State of Missouri, Department of State.

To All to Whom These Presents Shall Come:

I, Samuel B. Cook, Secretary of State of the State of Missouri, and Keeper of the Great Seal thereof, hereby certify that the annexed pages contain a full, true and complete copy of Articles of Association of the Geo. O. Richardson Machinery Company filed March 10th, 1892; of the certificate of Incorporation issued to said Company on the date aforesaid, and of the statement extending its corporate existence ten years from the 16th day of March, 1902, filed February 8th, 1902, as the same appears on file and of record, in this office.

In Testimony Whereof, I hereunto set my hand and affixed the Great Seal of the State of Missouri.

Done at the City of Jefferson this 17th day of April, A. D. 1903.

(Great Seal)

SAM B. COOK,
Secretary of State.

Be It Known, that the undersigned, in order to incorporate under the laws of the State of Missouri, governing the formation of manufacturing and business Companies, do hereby enter into the following agreement:

FIRST: The name of the Company shall be Geo. O. Richardson Machinery Company.

SECOND: The Company shall be located at the City of St. Joseph, Buchanan County, Missouri.

THIRD: The amount of the capital stock of the Company shall be ten thousand dollars ($10,000.) divided into one hundred shares of the par value of one hundred dol-

lars ($100.) each. That the same has been *bona fide* subscribed and one-half thereof actually paid in lawful money of the United States, and is in the custody of the persons hereinafter named as the first Board of Directors.

FOURTH: The names, places and residence of each of the several shareholders, and the number of shares of stock subscribed by each, are as follows:

Name	*Residence*	*No. of Shares*
Geo. O. Richardson	St. Joseph, Mo.	Five
C. W. Sherwood	St. Joseph, Mo.	Five
Emma L. Richardson	St. Joe, Mo.	Thirty
R. F. Maxwell	St. Joseph, Mo.	Five
S. C. Woodson	St. Joseph, Mo.	ten
J. W. McAlister	St. Joseph, Mo.	ten
J. W. McClymond	Massillen, O.	ten
C. M. Russell	Massillon, O.	ten
M. S. Norman	Saint Joe, Mo.	ten
W. A. Michael	St. Joseph, Mo.	five

FIFTH: The directory of the Company shall be composed of three of the shareholders and the names of those agreed upon for the first year are, Geo. O. Richardson, C. W. Sherwood, R. F. Maxwell.

SIXTH: The company shall continue for a term of ten years.

SEVENTH: The company is formed for the following purposes: The buying and selling of threshing, harvesting, mill, and all kinds of machinery. Also engines of all kinds and descriptions, agricultural implements, and all repairs necessary to the carrying on of a machinery and agricultural business. Also belting, packing, hose, etc., saws, brass goods, and articles of merchandise pertaining to a general agricultural and mercantile business. Also for the purpose of rebuilding and repairing engines, separators, saw mills, etc., and for the sale of repairs and parts necessary thereto, and the manufacture of any kind

of machinery or implement that may be deemed advantageous to the business.

In Witness Whereof, we have hereunto set our hands and seals, this 2nd day of March, A. D. 1892.

Geo. O. Richardson	SEAL
C. W. Sherwood	SEAL
Emma L. Richardson	SEAL
R. F. Maxwell	SEAL
S. C. Woodson	SEAL
J. W. McAlister	SEAL
J. W. McClymond	SEAL
C. M. Russell	SEAL
M. S. Norman	SEAL
W. A. Michael	SEAL

Before me, a Notary Public in and for Stark County, Ohio, personally appeared J. W. McClymond and C. M. Russell, who signed the foregoing instrument and acknowledged the same to be their free act and deed.

Dated Massillon, Ohio, March 2nd, 1892.

JESSE J. PITTS,
Notary Public in and for Stark
(Seal) County, Ohio.

My Commission expires June 8th, 1894.

Before me, a Notary Public in and for Buchanan County, State of Missouri, personally appeared Geo. O. Richardson, C. W. Sherwood, Emma L. Richardson, R. F. Maxwell, S. C. Woodson, J. W. McAlister, M. S. Norman and W. A. Michael, who signed the foregoing instrument and acknowledged the same to be their free act and deed.

Dated St. Joseph, Mo., March 7th, 1892.

JOHN D. FLINT,
Notary Public in and for Buchanan
(Seal) County, Missouri.

My Commission expires January 6th, 1895.

Filed for record March 14th, 1892, at 1 o'clock and 50 minutes P. M.

JOEL E. GATES, Recorder.

State of Missouri, County of Buchanan, ss.

I, Joel E. Gates, Recorder of Deeds within and for the County and State aforesaid, do hereby certify that the above and foregoing instrument of writing is a true and correct copy of the Articles of Incorporation of the Geo. O. Richardson Machinery Company, as recorded in book — at page — of the Records of Buchanan County.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at my office in St. Joseph, Mo., this 14th day of March, 1892.

JOEL S. GATES,

(Seal) Recorder.

Filed and Certificate of incorporation issued Mar. 16th, 1892.

A. A. LESSUEUR,
Secretary of State.

State of Missouri—No. 6192

CERTIFICATE OF INCORPORATION.

Whereas, Geo. O. Richardson, C. W. Sherwood, R. F. Maxwell, and others, have filed in the office of the Secretary of State Articles of Association or agreement in writing, as provided by law, and have in all respects complied with the requirements of law governing the formation of Private Corporations for Manufacturing and Business Purposes.

Now, Therefore, I Alexander A. Lesuer, Secretary of State of the State of Missouri, in virtue and by authority of law, do hereby certify that said parties, their associates and successors, have, on the date hereof, become a body

corporate and duly organized under the name of Geo. O. Richardson Machinery Company, and have all the rights and privileges granted to manufacturing and business corporations under the laws of this State. And that the amount of capital stock of said Corporation is ten thousand dollars.

In Testimony Whereof, I have hereunto set my hand and affix the Great Seal of the State of Missouri.

Done at the City of Jefferson, this sixteenth day of March, A. D. Eighteen Hundred and Ninety-two.

A. A. LESUEUR,
(Seal) Secretary of State.

CERTIFICATE EXTENDING TIME OF CORPORATE EXISTENCE OF THE GEO. O. RICHARDSON MACHINERY CO., ST. JOSEPH, MO.

Whereas, the period of corporate existence of the Geo. O. Richardson Machinery Co., of St. Joseph, Mo., a corporation existing under and by virtue of the laws of the State of Missouri, expires the 16th day of March, 1902, and said corporation being desirous of accepting the general laws of the State of Missouri relating to corporations, and having the time of its corporate existence extended for a period of ten (10) years from the said day of March 16th, 1902;

Wherefore we, the undersigned President and Secretary of said corporation, hereby certify that in pursuance to a notice in writing, previously given each stockholder of said company, such notice being decided by three-fourths (3/4) of the stockholders of said company, a meeting of the stockholders of said corporation was held at St. Joseph, Mo., on the 2nd day of December, A. D. 1901, at 10 A. M., for the purpose of determining whether or not the said corporation should accept the provisions of the general laws of the State of Missouri, relating to corporations and have its corporate existence extended for

the period of ten (10) years from the 16th day of March, 1902.

That at said meeting there were present stockholders of said company representing all of the capital stock of said company, and upon a resolution duly submitted it was decided by a vote of all of the stockholders in number and value of stock of said corporation, that said corporation accept the provisions of the general laws of the State of Missouri relating to corporations, and have its corporate existence extended for the period originally permissible to it—that is to say, for the period of ten (10) years from the 16th day of March, 1902, and that the capital stock of said company shall be ten thousand dollars ($10,000), divided into one hundred (100) shares of the par value of one hundred dollars ($100) each.

We further certify that thereafter on the 2nd day of December, 1901, at a meeting of directors of said company, we, as President and Secretary of said company, were duly authorized and directed by said Board of Directors to certify to the Secretary of the State of Missouri the facts hereinbefore alleged, and that said corporation has, by the approval of all its stockholders holding all the capital stock of said company, determined to accept the provisions of the general laws of the State of Missouri, relating to corporations, and have its charter extended, all as heretofore set out.

In Witness Whereof, we have hereunto set out hands at St. Joseph, Missouri, this 25th day of January, 1922.

R. F. MAXWELL, President.
W. M. BELLER, Secretary.

(Seal)

Approved by order of Board of Directors this 25th day of January, 1902

J. W. McClymond, W. M. Beller,
C. M. Russell, R. F. Maxwell,
E. C. Merwin, M. L. Ranson,
Directors.

Filed and certificate issued Feb. 8, 1902. Sam B. Cook, Secretary of State.

No. 6808. Geo. O. Richardson Machinery Co., Territory of Oklahoma, Secretary's Office. This instrument was filed in this office on this 21st day of April, A. D. 1903, and duly recorded in Corp. Rec. No. 10, page 583-5.

WILLIAM GRIMES, Secretary.

State of Oklahoma, Department of State.
Oklahoma City

Joe S. Morris,
Secretary

C. J. Kendle,
Asst' Secretary.

November 1, 1921

I, Joe S. Morris, Secretary of the State of Oklahoma, do hereby certify that the Geo. O. Richardson Machinery Co., a corporation organized and doing business by virtue of the provisions of the laws of the State of Missouri, did on the twenty-first day of April, A. D. 1903, qualify as a foreign corporation to transact business within the State of Oklahoma; that it appointed Chas. E. Riney of Blackwell, Oklahoma, as agent for service; that on the seventeenth day of January, A. D. 1911, this company filed withdrawal papers, and that according to our records, no papers have been filed since that date, reinstating this company.

Done at the Capitol at Oklahoma City, State of Oklahoma, this the First day of November, A. D. 1921, at the hour of Three o'clock P. M. and of the Independence of the United States of America the One Hundred Forty-Sixth.

(Seal)

J. S. MORRIS,
Secretary of State.

State of Oklahoma, Department of State.
Oklahoma City

Joe S. Morris, Secretary C. J. Kendle, Asst. Secretary

November 1, 1921.

Mr. Chas. L. Moore,
529 Liberty National Bank Bldg.,
City.

Dear Sir:

We are enclosing herewith certified copy of papers on file by the Geo. O. Richardson Machinery Company, together with certificate showing that no papers have been filed since their withdrawal.

The fee for the certified copy is $2.50, and for the certificate $1.00, making a total of $3.50. Kindly remit this amount at your convenience.

Very truly yours,

C. J. KENDLE,
Asst. Secretary of State.

C. J. KENDLE
AB

Q. Mr. Myers, you recall the filing of the revocation of the agency of Riney as your agent within this territory?

A. I do. If I will be permitted to explain just how that came about, I can probably save you some questions.

Q. Yes, sir.

A. When I took charge of the company in 1911, why, we took up with our attorneys our plans of doing business, also, with some Oklahoma attorneys, and we were advised that our plan of doing business under our contract was strictly an interstate business; I found that there had been this appointment of Riney some ninety days, as an agent and by advice of counsel, why, I filed this revocation of his appointment and we considered ourselves doing a

strictly interstate business in the state and tried to follow that plan all the way through and we thought we were and we still think we are.

Q. Now, prior to that time, or, under the Territorial Laws, you complied with the Territorial Laws by the appointment of this agent?

A. Yes, sir.

Q. You found him appointed, in other words?

A. I found him appointed, in other words; when I took charge of the company and in order to complete the record we revoked, or filed the revocation.

Q. Now, the company — that appointment—(statement not completed).

MR. PIXSON: Pardon me for leading, but I want to make this question clear.

Q. The present incorporation of the Geo. O. Richardson Machinery Company has never appointed a service agent within the State of Oklahoma?

A. It has not.

Q. It has never contemplated doing business within the State of Oklahoma within the meaning of the act?

A. No.

MR. MOORE: Now, we move to strike out the last question and answer as being a conclusion and an opinion of the witness whether they contemplated doing business within the meaning of the Act; that's a question of law and fact.

MR. PIXSON: It is. We concede that. We concede that.

BY COURT: The motion is overruled. Let the record stand as it is.

MR. MOORE: Note the exception.

BY COURT:

Q. In answer to Mr. Moore's question, asked you by counsel, if you employed a man to set up and also to get the machinery started, you said, you employed none in Oklahoma. You mean to say that you have none working in Oklahoma?

A. No, we have none. Now, if we sold a machine and

for instance, it may be very probable and we might probably admit that we will send a man from Wichita, from our Wichita branch, to give him, frequently, pointers.

By COURT: Your headquarters, though, of your traveling men, then, are at Wichita?

A. It is for everything except the extreme eastern part of the State; the eastern part of the State, we handle direct from St. Joseph, our home office.

By COURT: But you have sent men in to take care of any trouble to your customers if they have a machine?

A. Why, certainly; that's a matter that very seldom we have to do with, but we do do that.

By COURT: Yes.

Q. The advice and continuation of this man is promoted by the use of the mails, is it?

A. Yes, one or the other, either with the mail or telephone or telegraph.

Q. And you send a man down to advise them; does that man make repairs or rebuild machinery?

A. Oh, if it is usually a question of some ordinary adjustment, that's nine sixteenths of the trouble, with machinery, is simply that the machine will something get out of adjustment and the adjustment will change this, it is very seldom in actual work necessary.

Q. You have no employes within the State of Oklahoma who transacts that business?

A. No.

MR. PISSON: That's all.

RECROSS EXAMINATION.

By MR. MOORE:

Q. When your machine is taken back in bad repairs do you make any repairs on it before it is re-sold, Mr. Myers?

A. Well, we ship it in to our headquarters.

Q. Well, do you ever have to have men make repairs on machines, second hand machines that you have to take back in Oklahoma?

A. Why, I don't recall of but one instance in which we hired a local shop to make some repairs.

Q. Well, you send your own men in?

A. No, we don't; if we have a second-hand machine that we have to make repairs on a second-hand machine, why we take it right back to the branch, because we can do it so much cheaper, and I don't recall any case in which we ever sent any of our men out to make the repair on second-hand machine for the purpose of re-sale, when it was resold.

Q. Now, when you send machines down on consignment, the Geo. O. Richardson Machinery Company retains the title, don't they?

A. Well, we charge that to the dealer, but we retain the title in it, yes, sir; just the same as we would on a chattel lien.

Q. Yes, and when the dealer sells the machine on a consignment commission, how is the settlement made?

A. He has the right to either satisfy our invoice to him or he must submit to us the order of the ultimate purchaser which must be approved by us, which must be approved by us at St. Joseph, Missouri, beforehand.

Q. The dealer, then, has the option to pay for the machine outright at your price, and, then it is he makes settlement with the purchaser, is that your testimony?

A. Yes, sir.

Q. But, otherwise, he must take credit at your office down at St. Joseph, is that right?

A. Yes, sir, if he delivers that machine he is held personally responsible for it.

Q. And he wouldn't get the commission then?

A. Well, if we are willing to accept the paper of the ultimate consumer, why, he gets the commission when it is paid.

Q. Yes.

A. That's also provided for in the contract there that's covered by that.

Q. Well, if the dealer didn't succeed in selling the machine, would it be shipped back to your office at St Joe?

A. Why, we would make the best disposition of them

we could; we might ship them back to St. Joe or ship to Wichita or some other city.

Q. Subject to your order; subject to your order to be sold wherever it would be sold to the best advantage?

A. Yes.

Q. Uh-huh, now, all the local dealers in any case have authority to collect for the purchase price of the machines in cash?

A. Well, they would have the authority, of course; they would be assuming the responsibility of doing that, and then they would be compelled to make settlement with us.

Q. Well, then, the dealer had general authority then to sell either on credit or cash?

A. No, they had no authority to sell on credit, without first submitting to us.

Q. You have to supervise the credit?

A. We had to supervise the credit, otherwise they were personally—it was a direct sale to the dealer.

Q. Then, when they sell for the cash, did they take the commission out of that sale?

A. They would remit to us their net price.

Q. Yes, and those proceeds, you say, were kept separate?

A. I don't understand.

Q. I mean, they keep their accounts separate, their accounts were kept separate—that is, the company's money was always set aside out of each sale; was that right?

A. I presume so.

Q. Yes. Do you know how many repair men, if any, you had in Oklahoma in 1920, traveling out of Wichita or from the St. Joe office?

A. I don't know how many calls of that kind we had.

Q. About how many, Mr. Myers?

A. Why, I don't know we had any; as far as—we don't. It would be a matter of considerable figuring to find out from our Wichita record.

Q. How many men of that character do you keep, altogether, traveling out over the state?

A. Well, we usually have two out of Wichita, but they are men that do the shop work, do the shop repairing there and they only go out occasionally when we don't keep any men on the road whose purpose it is to make adjustments and nothing else.

Q. What territory does your branch office at Wichita have charge of, Mr. Myers?

A. It handles all except the eastern tier and the eastern side of Oklahoma and the State of Kansas.

Q. It has charge, then, of everything west of that line, drawn from Durant to Tulsa?

A. Yes, about that.

MR. MOORE: That's all.

BY COURT: Step aside, please, sir.

MR. PINSON: Just one question in order to make the record clear.

RE-DIRECT EXAMINATION.

BY MR. PINSON:

Q. Counsel has asked you about the sale of machines for cash; I want to ask you whether, over any extended period of time, or on any numerous occasions, you ever ship machines to dealers' order, as a direct sale?

A. We do that merely—(witness interrupted).

MR. MOORE: Object to that as leading and suggestive.

BY COURT: Sustained.

MR. MOORE: I think it is both leading and suggestive. I think you have covered all of that testimony.

MR. PINSON: That's all, Mr. Myers.

(Witness excused.)

MR. PINSON: That's our case on the proposition of doing business within the State.

Defendant rests.

MR. MOORE: Now, if the court please, here is the list of evidence that I wish to offer: I want to offer the depositions of R. N. Smith and E. A. Harris, taken before W. R. Kirk, Notary Public at Muskogee, Oklahoma, on

January 21, 1922, together with all exhibits attached thereto, omitting the formal parts.

NOTE BY REPORTER: Said deposition having been offered in evidence by the plaintiff and having been received in evidence by the court, without objection on behalf of the defendant; a full, true and correct copy of said deposition being in words and figures as follows, to wit:

NOTICE TO TAKE DEPOSITIONS.

State of Oklahoma, Oklahoma County, ss.

In the District Court of the United States for the Western District of Oklahoma.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a corporation, Defendant. No. ——.

The said Geo. O. Richardson Machinery Company, a corporation, and D. Hayden Linebaugh, attorney of record, will take notice that on Saturday, the 21st day of January, A. D. 1922, the plaintiff above named will take depositions of sundry witnesses, to be used as evidence in the trial of the above cause at the office of the County Sheriff of the County of Muskogee, State of Oklahoma, in the City of Muskogee, Oklahoma, between the hours of eight o'clock A. M. and six o'clock P. M. of said day, and that the taking of the same will be adjourned and continued from day to day at the same place and between the same hours until they are completed.

EVEREST, VAUGHT & BREWER
and CHAS. L. MOORE,
Attorneys for Plaintiff.

Service of the above notice is hereby acknowledged to have been made on the undersigned, this 18th day of January, 1922.

D. H. LINEBAUGH,
LINEBAUGH & PINSON,
Attorneys for Defendant.

SUBPOENA—CIVIL ACTION—*Duces Tecum.*

The State of Oklahoma, Muskogee County, ss.

To Harris Smith Machinery Company and E. A. Harris and R. N. Smith.

You, and each of you, are hereby commanded to be and attend as a witness before me, the undersigned, a Notary Public in and for said County of Muskogee, State of Oklahoma, at my office at 705 Metropolitan Building, in the City of Muskogee, State of Oklahoma, on the 21st day of January, A. D. 1922, at the hour of ten (10) o'clock A. M., to give evidence in a hearing before me to take depositions in a cause now pending in the District Court of the United States for the Western District of the State of Oklahoma, wherein John A. Scott is plaintiff and Geo. O. Richardson Machinery Company, a corporation, is defendant; and bring with you all contracts in force, or existing between you or either of you and the Geo. O. Richardson Machinery Company, a corporation, at any time during the calendar year of 1920, or any and all other instruments of writing relative to your agency for the said defendent corporation during said calendar year 1920.

And this you will in no wise omit, under penalty of the law.

Witness my hand at my office in said City of Muskogee, Oklahoma, this 17th day of January, A. D. 1922.

(Signed) W. R. KIRK,
Notary Public, Muskogee County, Okla.

My Commission expires May 28, 1925.

SHERIFF'S RETURN.

State of Oklahoma, County of Muskogee, ss.

Received this writ on the 17th day of January, 1922, and executed and served same as follows:

On Harris Smith Machinery Company, a co-partner-

ship, on Jan. 17th, 1922, by delivering a true copy to R. N. Smith, a member of said firm, in said county; and

On E. A. Harris, on January 18th, 1922; and
On R. N. Smith, on January 17th, 1922,

by delivering to each of said parties personally, in said county, a true copy of the above writ with all the endorsements thereon.

J. D. ROBBINS, Sheriff.
By W. R. KIRK, Deputy.

DEPOSITION of witnesses taken to be used in an action pending in the United States District Court within and for the Western District of the State of Oklahoma, wherein John A. Scott is plaintiff and Geo. O. Richardson Machinery Company, a corporation, is defendant, in pursuance of the notice hereto attached and at the time and place therein stated; the said John A. Scott, plaintiff, appeared by Charles L. Moore, his attorney, and the said Geo. O. Richardson Machinery Company, a corporation, appeared by F. F. Brewster, its attorney. Thereupon it was specially agreed that the place of taking said depositions should be changed from the office of the County Sheriff of Muskogee County, as specified in the notice, to the offices of Linebaugh & Pinson, 907 Barnes Building, Muskogee, Oklahoma; and thereupon the said plaintiff produced the following witnesses in order, to wit: R. N. Smith, of lawful age, who being first duly sworn, deposes and says:

DIRECT EXAMINATION BY MR MOORE.

Q. State your name, age, residence and occupation.

A. R. N. Smith, 50, 408 Jefferson Street, Muskogee, Oklahoma. I am in the machinery business at Muskogee, Oklahoma.

Q. Under what name or style do you transact your machinery business?

A. Harris-Smith Machinery Company.

Q. State the character of your firm as to being a corporation or a co-partnership.

A. Co-partnership.

Q. Of whom is this co-partnership composed?

A. E. A. Harris, R. N. Smith, W. P. Brandt.

Q. Where is your principal place of business, giving the street and number?

A. 107 Commercial Street, Muskogee, Oklahoma.

Q. What is the character of business transacted by your firm?

A. Taking orders for Russell Machinery.

Q. How long has this partnership, as it now exists, been transacting business?

A. From May 15, 1921.

Q. Were you in the same line of business individually or in conjunction with some one else prior to May, 1921?

A. Yes, sir.

Q. For how long prior?

A. November 8, 1920.

Q. Prior to November 8, 1920, were you personally or in conjunction with any one else engaged in the sale of Russell Threshing Machines or other kinds of machinery manufactured by the Russell Company, either in your own personal capacity or in association with some one else?

A. I was traveling salesman for Geo. O. Richardson Machinery Company up to November 1, 1920.

Q. For how long prior to November 1, 1920?

A. From December 1, 1917.

Q. As salesman for the Geo. O. Richardson Machinery Company, what line of goods did you sell or take orders for?

A. Russell engines and tractors, separators and attachments.

Q. Since your connection with the sale of threshing machines, including engines and separators, has your sale territory been in the State of Oklahoma?

A. My territory has been Missouri, Kansas, Oklahoma and Arkansas.

Q. You were traveling then for Geo. O. Richardson Machinery Company, taking orders for sales of Russell Machinery Company, in the State of Oklahoma for the year 1920 up to November 1, 1920, and on November 8th you organized the Harris-Smith Machinery Company, which has handled the said machinery at Muskogee and trade territory since that time?

A. Yes, sir.

Q. Do you know whether or not there were local machinery men in Muskogee or elsewhere in the State of Oklahoma who kept Russell Machines at their place of business while you were a traveling salesman during the year 1920, and if so, state who said local machinery men were and where their place of business was located?

A. Spaulding Implement Company, Vinita, Oklahoma.

Q. Do you know whether or not there were other local implement dealers in the State of Oklahoma handling the Russell machines for the Geo. O. Richardson Company other than Spaulding & Company in the year 1920, up to November 1st?

A. E. A. Harris, Muskogee, Oklahoma.

Q. Do you know of any others in the State for that time?

A. Not to my knowledge.

Q What part of the State of Oklahoma did you solicit orders in while on the road for the Geo. O. Richardson Machinery Company, during the year 1920?

A. What is termed northeastern Oklahoma, as far east as a line running north and south through the territory Bryan County on the south end and Tulsa County on the north. Practically the Eastern territory, lying east of the line specified.

Q. Do you know whether or not the Geo. O. Richardson Machinery Company solicited orders for the sales of machinery west of that line in the State of Oklahoma during the year 1920 up to November 1, 1920?

A. Couldn't say that they did or didn't.

Q. Now just state in your own language, Mr. Smith, the general character of your business operations in soliciting orders for sales of machines in Oklahoma during 1920 while you were on the road for Geo. O. Richardson Machinery Company up to November 1, 1920.

A. I would go out and get the prospects from St. Jo or from Spaulding Implement Company at Vinita or Mr. E. A. Harris, Muskogee; go out and see the prospective customer and he and I would talk over the sale, get to a conclusion with the prospective customers; I'd take his order on a regular order blank and send it in to St. Jo, Mo., leaving a copy with him; stated in the order and I would call his attention to it when he would read it over that all orders was subject to the home office at St. Joseph, Mo., acceptance.

Q. Have you in your possession any printed forms of these orders that you used in 1920?

A. Yes, sir.

Q. You had blank forms of orders for new machinery and also blanks for orders of second hand machinery; is that right?

A. Yes, sir.

Q. The orders for new machinery were taken on a form on a pink tinted paper and the orders for second hand machinery on blue tinted paper; is that right, Mr. Smith?

A. Yes, sir.

(Here attorney for plaintiff hands to the witness a paper and asks him if he ca nidentify the same.)

Q. That is the form you used for taking orders for new machinery?

A. Yes, sir.

Q. Said paper is marked Plaintiff's Exhibit "A" and attached to the deposition of this witness as part thereof.

(Here attorney for plaintiff hands to the witness a paper and asks him if he can identify the same.)

A. Yes, this is the form of order used for taking orders for second hand machinery.

(Said paper is now marked Plaintiff's Exhibit "B" for the purpose of identification and is attached to deposition of this witness and made part thereof.)

Q. Did you have any written contract with the Geo. O. Richardson Machinery Company for your employment as salesman during the first ten months of 1920?

A. I had what they termed a memorandum for sales service.

Q. Have you with you the original memoranda in which your contract for services was set out?

A. No, sir.

Q. Where is that memoranda?

A. I don't know where it is; I think I burned it up.

Q. This contract then was with the Geo. O. Richardson Machinery Company?

A. Yes, sir.

Q. Was your compensation for services based on a commission for sales effected by you or was it a stipulated salary?

A. It was a salary, with a bonus after so many thousand dollars of sales.

Q. By whom was your compensation paid, Mr. Smith?

A. Geo. O. Richardson Machinery Company, St. Joseph, Mo.

Q. Your connection, then, with the defendant company up to November 1, 1920, was simply as a traveling salesman, as heretofore indicated?

A. Salesman and expert and collector.

Q. Did you have occasion during the year 1920 to visit the place of business of Spaulding & Company at Vinita and of E. A. Harris of Muskogee?

A. I visited the Spaulding Implement Company's place of business several times, and E. A. Harris on his farm west of Muskogee.

Q. State as nearly as you can the several times you

visited Spaulding & Company at Vinita between January 1st, and November 1st, 1920.

A. I wouldn't undertake to say the number of times; I was in and out and was there one time for practically a week during the County Fair at Vinita.

Q. State if you can the month the County Fair at Vinita was held in 1920?

A. I believe it was the week of September 15th.

Q. Do you know whether or not there was an exhibit of the Russell Machinery at the County Fair in Vinita during the fall of 1920?

A. There was not.

Q. Do you know whether or not there were any Russell machines at the place of Spaulding & Company during said time?

A. Yes.

Q. Did you see them there yourself, Mr. Smith?

A. Yes.

Q. How many rigs were there at that time?

A. Three separators and attachments.

Q. Were there any engines?

A. No.

Q. Now, during the week that you spent at Vinita, were you endeavoring to secure orders for the sale of Russell machines?

A. I was helping Spaulding Implement Company to get orders.

Q. Do you know how long those machines that you saw there during the Fair week had been at their place of business?

A. They had been there since long about the first of July.

Q. Did the Geo. O. Richardson people sell in Oklahoma any machinery other than the Russell machines?

A. Not to my knowledge.

Q. Did they sell any other machinery except threshing machinery?

A. Threshing machinery and tractors.

Q. By whom are their tractors manufactured that they handled?

A. Russell & Company.

Q. Do you know, Mr. Smith, whether or not the Geo. O. Richardson people were exclusive agents in 1920 for the Russell machinery?

A. I don't know anything about that.

Q. You never knew of a sale of Russell machines during that time in the State of Oklahoma except through the Geo. O. Richardson Machinery Company; did you?

A. Not to my knowledge.

Q. Did the Spaulding people at Vinita also keep parts and repairs for the machines sold?

A. No.

Q. Did Mr. Harris at Muskogee?

A. No.

Q. Do you know what kind of contract, if any, that the Geo. O. Richardson Machinery Company had during the year 1920 with the Spaulding Company at Vinita, or with Mr. Harris at Muskogee, prescribing the terms and conditions of their contract for sale?

A. Had what was termed a Local Agent's Commission contract.

Q. Did the Spaulding & Company handle, in the year 1920, other machinery aside from that which they procured through the Geo. O. Richardson Machinery Company?

A. Yes, sir.

Q. How about Mr. Harris at the same time?

A. Mr. Harris only handled machinery through the Geo. O. Richardson.

Q. Do you know whether Mr. Harris had in Muskogee County any of the Russell machines furnished by the Geo. O. Richardson Company in the year 1920?

A. Had one separator and tractor and a skelton tractor at the State Fair, October, 1920.

Q. Do you know how long he had had that machinery in possession in Muskogee County prior to the exhibition at the State Fair in October?

A. It got into Muskogee County the third day of the fair.

Q. Were those machines, then, exhibited on behalf of the Geo. O. Richardson Machinery Company at the State Fair in October, 1920?

A. They were exhibited by Mr. E. A. Harris, who paid all the expense, freight on the machinery, signs, etc.

Q. Mr. Smith, did your work devolve on you any settlements for machines that were sold in the year 1920, or to assist in getting notes and mortgages in settlement of the deferred payments on Russell machines sold by the Geo. O. Richardson Machinery Company?

A. I don't remember of taking any; all of the settlements and like that were made at the banks that I call to mind at present.

Q. Well, there were a good many machines sold in 1920 in your Oklahoma territory, was there not?

A. Not very many.

Q. Do you know what was done with the three machines that were on hand from July 1, 1920, with the Spaulding Company at Vinita?

A. Yes. One was sold to Blackstone and McGahey and taken back under bill of sale this winter; the other two are down here at our warehouse, 107 Commercial street.

Q. When did your firm bring those machines over from Vinita to Muskogee?

A. I think it was about the first of July, 1921, if I remember right.

Q. Does your firm, Harris Smith Machinery Company, handle any other machinery except that furnished by Geo. O. Richardson people?

A. That's all we've handled so far.

Q. Who is the owner of these machines that were at Vinita in the fall of 1920 and were later brought over to Muskogee?

A. The Russell & Company, Massillon, Ohio.

Q. Do you folks have any business dealings direct with the Russell people, or do you deal with the Geo. O. Richardson Machinery Company at St. Joseph?

A. All done through Geo. O. Richardson Machinery Company, St. Joseph, Mo.

Q. In whose name do you list the property on hands for taxation, Mr. Smith?

A. We've never had anything on hands for taxation until now.

Q. These two particular machines; who would they be listed to for taxation?

A. We'll pay the taxes, but they are really the property of Russell & Company, Massillon, Ohio.

Q. Do you know whether or not the local business transacted by the Harris Smith Machinery Company for the Geo. O. Richardson Machinery Company from November 8, 1920, is practically the same and under the same general contract under which the business was handled prior thereto by E. A. Harris of Muskogee and Spaulding & Company of Vinita?

A. Similar, with the exceptions that Harris Smith Machinery Company got an additional per cent for looking after their own sales and experts.

(Here attorney for plaintiff hands to the witness a document or paper and asked him if he can identify the same.)

A. Yes, sir. It is a Local Commission Agreement between E. A. Harris, Muskogee, Oklahoma, and Geo. O. Richardson Machinery Company, St. Joseph, Mo.

Q. You may state whether or not that contract was taken by you from Mr. E. A. Harris on April 22, 1920, expiring October 31, 1920.

A. It was.

(Here attorney for plaintiff asks that the said instrument be marked Plaintiff's Exhibit "C" for the purpose of identification, which is done, and the same attached to the deposition of this witness as part thereof.)

Q. Do you know, Mr. Smith, whether or not a similar contract existed at the same time between Geo. O. Richardson Machinery Company and the Spaulding Company of Vinita?

A. Yes, sir.

Q. Did you also act for the Richardson Machinery Company in the taking of that contract from Spaulding & Company?

A. Yes, sir.

Q. It was written on the same form of blank as this?

A. I think so.

Q. Do you know whether or not there was also another contract in force between the Geo. O. Richardson Machinery Company and Spaulding & Company at Vinita, or with E. A. Harris of Muskogee during the summer of 1920 called a "Dealers' Commission and Sales Agreement"?

A. E. A. Harris had no other; I am of the opinion that Spaulding had both contracts.

Q. (Here attorney for plaintiff hands to the witness a paper and asks him if he can identify the same.)

A. No, this is not the contract; this form is a 1921 contract.

Q. Then there was for 1920 a contract with Spaulding & Company called a "Commission Agreement" similar to Exhibit "C" and a "Dealers Commission and Sales Agreement Contract" under the form being used by the defendant company for the year 1920?

A. Yes; I think so.

Q. Have you the original of that contract or a copy of the printed form on which the same was made?

A. No, I haven't got it now, but I can state the difference between the form you have and the one in use in 1920. The form you have in your hand includes the entire line of steam engines, threshers, tractors, and all size separators. In 1920, the white contract included the steam engines, large separators, and the yellow contract—"Dealers Commission and Sales Agreement"—called for the small separator and gas tractors only.

Q. Did you on behalf of the Geo. O. Richardson Machinery Company take from Spaulding & Company at Vinita the contract just described by you in addition to the "Commission Agreement" previously testified to?

A. I took the one I just described; not for sure about the heavy line.

Q. (Here attorney for plaintiff hands to the witness a paper and asks him if he can identify the same.)

A. That is the form of contract used in 1921 for the entire line.

Q. (Here attorney asks said document to be marked as Plaintiff's Exhibit "D" for the purpose of identification and attached to the deposition of this witness as part thereof, which is done.)

Q. Now, Mr. Smith, with the exception as to differences in the line or grade of goods handled, the "Dealers Commission and Sales Agreement" which you took from Spaulding & Company for the machinery sales of 1920, is the same as Exhibit "D" which you have just identified?

A. I couldn't say that they are exactly the same, outside of part mentioned, but the provisions are the same, or substantially so, as respecting the handling of the sale of the goods.

Q. Do you know by whom the expenses of Spaulding & Company as to rent of their place of business, or as to charges for storage of the machinery, belonging to the Geo. O. Richardson Machinery Company, were paid?

A. Spaulding Implement Company paid their own rent. These three machines at Vinita in 1920 were shipped from Massillon, Ohio, direct to Vinita; Spaulding first paid the freight; when we shipped the machines down here, he sent the freight bill to us, and we in turn sent it to Geo. O. Richardson Machinery Company at St. Joseph, Mo. I don't know who paid the freight bill; that is, from Massillon, Ohio, to Vinita. We paid the freight from Vinita to Muskogee.

Q. Now, I understand you that two of those threshing machines which Spaulding & Company had at Vinita on July 1, 1920, have ever since that time been kept there at Vinita and here at Muskogee; is that right?

A. Yes.

Q. Are those new machines or second hand?

A. New.

Q. Mr. Smith, you know of six separators and two engines that were levied on by the Sheriff of Muskogee County at your place of business in the summer of 1921?

A. Yes.

Q. How long had your firm had those machines there at your place at that time?

A. The first was there about May 5, 1921.

Q. Did these six separators levied on include the two that were shipped to you from Spaulding & Company?

A. Yes, sir.

Q. What have become of those six separators and two engines that were levied on by the Sheriff and later released by order of the Federal Court?

A. The six separators are down there in the house; one of the engines is out on a vacant lot, the other engine was sold to Wm. Kirksey in Muskogee County.

CROSS EXAMINATION BY MR. BREWSTER.

Q. Did you ever as salesman for the defendant company negotiate a sale of any machinery within the state of Oklahoma to any purchaser except the same was sold under the terms and agreement of plaintiff's Exhibits "A" or "B"; depending, of course, upon whether it was new or second hand machinery?

A. No.

Q. Did you upon the sale of all such machinery sell the same subject to the approval of the home office of the defendant company?

A. Always.

Q. Did the purchaser always understand this to be true.

A. Yes; I always left a copy of the contract with him; told him about how long it would take for the home office to reject or accept the transaction.

Q. Did you have authority to sell in any other manner than under said written agreement?

A. No.

Q. What, if anything, did you have to do with the local agents in Oklahoma who had contracts with the Geo. O. Richardson Company, which have been introduced?

A. My duties were to go and assist them in procuring orders for this Russell & Company machinery, made in Massillon, Ohio, and sold through the Geo. O. Richardson Machinery Company.

Q. Were your transactions, when acting with such local dealers, governed by the written contract that such local dealer had at the time with the defendant company?

A. Yes.

Q. Did you ever perform any act or sell any machinery or transact any business as a representative of the defendant company within the State of Oklahoma in any capacity except under a written contract governing such negotiations or act done by you?

A. No.

(The defendant company asks that "Dealers Commission and Sales Agreement" between Harris-Smith Machinery Company and the defendant Company, bearing date November 8, 1920, be identified as Defendant's Exhibit "1", which is accordingly done.)

Q. Please state, Mr. Smith, what defendant's Exhibit "1", is?

A. It is a sales and commission agreement between Geo. O. Richardson Company, a corporation, St. Joseph, Mo., and Harris-Smith Machinery Company, E. A. Harris and R. N. Smith, Muskogee, Oklahoma, commission on sales from November 8, 1920, to October 1, 1921.

(The defendant now offers Defendant's Exhibit "1" in evidence, and the same is attached to deposition of this witness as Defendant's Exhibit "1" and as a part of cross examination of said witness.)

Q. Mr. Smith, do the instruments which have been introduced known as Plaintiff's Exhibits "A", "B", "C" and "D" and Defendant's Exhibit "1" embody and completely cover all of the dealings and transactions you have

at any time had with, by or for the defendant company in any capacity.

A. Yes.

RE-DIRECT EXAMINATION BY MR. MOORE.

Q. Mr. Smith, in taking orders or soliciting orders for the sales of the Russell machines on behalf of the defendant company, were you furnished any advertising matters, setting out the qualities of the machines?

A. Yes, sir.

Q. How was that advertising handled as to being in prospectuses issued by the company, advertisements in the newspaper, fair programs, etc.?

A. All the advertising furnished by the company was catalogs and circulars furnished to the dealers and advertising in national papers like "American Threshermen", general advertising for all branches and distributors; the local advertising was done by the dealer himself, if any was done, the agents' agreement so stipulating.

Q. In soliciting orders on prospective purchasers, did you ever have occasion to show the prospective buyer the machines on hand at the local agency.

A. Yes; that's what we had the local agents to carry them for.

Q. Well, then, on behalf of the Geo. O. Richardson Machinery Company, you assisted the local agencies in Oklahoma in exhibiting the good qualities of your machines and to secure orders for sales?

A. Yes, took the orders subject to the Geo. O. Richardson Machinery Company's acceptance.

Q. If an order was submitted and accepted and satisfactory settlement made, how was the machine delivered to the buyer?

A. The machinery delivered to the buyer depended on whether he wanted to come in and haul it out of town or whether he wanted it shipped to him after the home office's acceptance of the papers and they were signed up.

Q. A buyer would be delivered a machine on hand with the agent at the time the order was taken?

A. Not unless the agent had already settled for the machinery himself with the company and owned the machinery; in that case he would take the customer's settlement in his own name.

A. Well, in the mortgages running to the Geo. O. Richardson Machinery Company, that was in cases where the company itself owned the property; is that right?

A. I don't know about that.

Q. Well, if the local agent had already settled with the Geo. O. Richardson Company for the machines, the mortgage then was run in the name of the local agent?

A. Yes.

Q. As a matter of fact, so far as your knowledge goes, there was no case where the local agent owned the machinery settled for?

A. I know cases where the local agent got in behind it and settled for it and put their paper up as collateral for it.

Q. Well, it was the practice of the defendant company to ship machines into Oklahoma to their local agents awaiting sale so that the same could be delivered to the purchaser as soon as his settlement was approved at the home office?

A. No.

Q. State what the practice was.

A. Their practice was to wherever possible, and in almost all cases, to make the shipments direct from the factory. One or two instances, sample machines were shipped from fair exhibits, the bulk of the machinery on my block of territory happened here from orders being countermanded after the arrival of the machinery.

Q. When machinery had been shipped here on orders and the orders had been countermanded by the purchaser, you and the local agents for the defendant company then secured new orders to be approved at the home office at St. Jo, and when approved and settlements satisfactorily made, the new order was filled by delivery of the machine

which had been first sold and countermanded; is that correct?

A. Yes, sir.

(Signed) R. N. SMITH.

Also, E. A. Harris, who, being first duly sworn, deposes and says:

DIRECT EXAMINATION BY MR. MOORE.

Q. State your name, age, residence and occupation.

A. E. A. Harris, age 40, 832 J Street, Muskogee, Oklahoma, selling machinery.

Q. What kind of machinery do you sell?

A. Russell machinery.

Q. How long have you been so engaged at Muskogee, Oklahoma, and the trade territory tributary thereto?

A. Since November 8, 1920.

Q. Are you the same E. A. Harris that is one of the co-partners in the firm of Harris-Smith Machinery Company at 107 Commercial Street?

A. Yes.

Q. Did you individually engage in the sale of machinery at Muskogee County, Oklahoma, prior to the formation of your partnership on November 8, 1920?

A. Yes, I had a local commission contract with the Geo. O. Richardson Machinery Company.

Q. You were present this morning during the taking of the testimony of Mr. R. N. Smith?

A. I was.

Q. Is he the same R. N. Smith constituting with you and Mr. Brandt the partnership firm of Harris-Smith Machinery Company?

A. He is.

Q. Without going into all the details of Mr. Smith's testimony, are you able to say whether or not the facts stated by him in reference to contracts which he took on behalf of the defendant company with you and which he identified as plaintiff's Exhibit "C", and defendant's Ex-

hibit "1", are true and substantially correct as stated by him?

A. So far as I know, it is, yes.

(Here attorney for plaintiff hands to the witness plaintiff's Exhibit "C" and asks him if he can identify same.)

A. Yes.

Q. Was this contract in force between you and defendant company from April 22, 1920, until October 31, 1920?

A. Yes.

Q. During the time that the commission agreement, plaintiff's Exhibit "C", was in force, did you have any other or further written contract with the Geo. O. Richardson Machinery Company respecting the sales of machinery for them being the Russell line?

A. No.

Q. Then, as I understand you, the contract set out in plaintiff's Exhibit "C" was the only written contract that you had with the defendant company from April 22, 1920, to October 31, 1920; is that correct?

A. It is correct.

Q. Through your agency at Muskogee, were there any machines sold by you at Muskogee or in the trade territory tributary thereto from April 1920, to October 31, 1920?

A. Yes, there was.

Q. State, if you know, about how many such threshing outfits were sold during that time?

A. I believe there were three complete outfits of new machinery and one second-hand.

Q. Were you assisted in these sales by Mr. Smith, who was then traveling salesman for defendant company?

A. Yes.

Q. State, Mr. Harris, your methods of affecting these sales.

A. Well, when I get a prospect customer, I go and find out what he wants and then, if I talk him in the notion, take his order, send it to St. Jo to the Geo O. Richard-

son Machinery Company for approval and acceptance; that's all I have to do with it.

Q. Did you use the same forms of blanks in taking orders that Mr. Smith used, identified by him as plaintiff's Exhibit "A" for new machinery and plaintiff's Exhibit "B" for second-hand machinery?

A. I used the same forms.

Q. Were you and Mr. Smith while working together and assisting each other in making sales, some of the orders were taken by you and some were taken by him?

A. Yes.

Q. Did you handle the business during the selling season of 1920, in strict accordance with the commission agreement, plaintiff's Exhibit "C"?

A. Well, I don't really know what all there is in the commission contract.

Q. Well, state, then, Mr. Harris, after receiving an order for the purchase of machinery, what was done with the order?

A. Well, the orders that were taken while Mr. Smith was here he took charge of them, and the orders that were taken when he wasn't here I sent them direct to him at Independence, Mo.

Q. When the orders were accepted at the defendant company's home office in St. Jo, what was then done toward filling the order?

A. All the machinery that was shipped into this territory was billed to themselves, Geo. O. Richardson Machinery Company, and the bill of lading was sent to the bank with settlement papers; I hadn't nothing to do with the delivery at all.

Q. In case there were to be deferred payments, notes were taken payable to the Richardson Machinery Company and chattel mortgages taken on the property sold from the purchasers; is that correct?

A. Yes.

Q. Were these notes and mortgages made out ready for signature by the home office, or were they prepared here in Muskogee?

A. They were made out at St. Jo, the home office.

Q. And did the bank to whom they were sent with bill of lading attached, attend to getting the purchasers' signatures to the papers?

A. Yes, sir.

Q. What bank did the company use here in Muskogee?

A. Whatever bank the customer wanted.

Q. When the notes and mortgages were signed, the bank would then deliver the bill of lading to the customer and the customer would then go and get the machinery purchased; is that correct?

A. Yes, sir.

Q. Now, that applied to new machines or to second-hand machines as well?

A. It applied to both, I suppose.

Q. Where were these second-hand machines kept prior to the sale of same?

A. At St. Jo, Mo.

Q. Do you know of machines where they had been sold to one purchaser and the order countermanded, were later sold to other purchasers?

A. Not in my territory.

Q. Did your territory embrace anything but Muskogee County?

A. No.

Q. Well, Mr. Smith took orders, did he not, for the defendant company for sales of machinery in Muskogee County and the trade territory tributary to Muskogee with which you had nothing to do and on which you did not get commission, as in the case of sales which you helped to secure?

A. No, I got a commission on everything that was sold in Muskogee County.

Q. Mr. Harris, I notice that on June 7, 1920, seven chattel mortgages to the Geo. O. Richardson Machinery Company were filed in the office of the County Clerk of Muskogee County securing notes given for the purchase of machinery, one of same being from S. E. Cozart, numbered 135988; do you know of that sale to Mr. Cozart?

A. Yes.

Q. Was that a new or a second-hand machine?

A. A new engine.

Q. Do you know who acted for the Geo. O. Richardson Machinery Company in filing these seven chattel mortgages on June 7, 1920?

A. No, I do not.

Q. Do you also know of a chattel mortgage to the defendant company filed June 7, 1920, from W. C. Carroll and others?

A. That's the same note as the Cozart note.

Q. Do you know of one taken from William Kirksey and others?

A. Yes.

Q. Do you know of one taken from Call Ingram?

A. That's the same one as the Cozart and Carroll note.

Q. Do you know of one taken from T. A. Anthony?

A. He's one of the same bunch as Carroll and Cozart.

Q. Do you know of one taken from G. W. Baldwin?

A. Yes, he's of the same bunch, too.

Q. How many rigs did you sell to these gentlemen, just one?

A. Just one.

Q. What did it consist of?

A. One 20-horse steam engine.

Q. These seven chattel mortgages that were filed on June 7, 1920, were all taken in settlement for the same engine?

A. I don't know anything about seven chattel mortgages taken for one engine.

Q. Well, do you say that Carroll, Kirksey, Ingram, Anthony, Baldwin and Cozart altogether bought this engine?

A. No, Mr. Kirksey wasn't in on that deal at all.

Q. Then, you sold one rig to Mr. Kirksey and another rig to the other gentlemen named; is that it?

A. Yes, sir.

Q. Were those two rigs the only two you sold in

Muskogee County in 1920 before you organized the partnership firm of Harris-Smith Machinery Company?

A. No.

Q. What other rigs did you sell in 1920 in Muskogee County?

A. I sold a bunch of six farmers at Creekola a threshing rig.

Q. Did you sell any others that year?

A. Me and Mr. Smith bought one together and shipped to Council Hill.

Q. Were these all new rigs or were some of them second-hand?

A. It was a second-hand rig that Mr. Smith and I bought.

Q. State the time that you bought this rig.

A. It was somewhere near the first of June, 1920, I believe.

Q. Where was this rig when you purchased it?

A. It was shipped from St. Jo, Mo.

Q Was it purchased under this commission contract which you had in force at that time?

A. It was purchased while this contract was in effect, but they gave us a commission off the list price; I received no commission for that sale.

Q. Did you, during the season of 1920, sell any saw mill outfits or stackers?

A. No saw mill at all and just the stackers that came with the machines.

Q. Did you during 1920 take any orders for the sales of parts or attachments for the defendant company?

A. I don't remember of taking any.

Q. Did you, while your commission contract, plaintiff's Exhibit "C," was in force, handle the sale of the defendant's machinery practically the same as the Harris-Smith Machinery Company has handled it since November 8, 1920?

A. No.

Q. State the differences, if any, in the handling of the sale of this machinery.

A. Well, in 1920 I had nothing to do except make the sale.

Q. Did you travel away from Muskogee County in assisting Mr. Smith in making sales in 1920?

A. I made one trip with him to Wagoner, and one to Morris, I believe. That was all.

Q. Did you assist in making sales in 1920 of the business that was handled through the Spaulding Company at Vinita, Oklahoma?

A. I did not.

Q. You don't know of your own knowledge, then, Mr. Harris, how the defendant's business was handled through Spaulding & Company at Vinita and trade territory tributary?

A. No, I don't.

Q. Are you the same E. A. Harris who, with R. N. Smith, witnessed the chattel mortgage from S. E. Cozart to the defendant company, reference to which has been made in your testimony heretofore?

A. Yes.

Q. And your partner, R. N. Smith, is the same R. N. Smith who, with you, witnessed that chattel mortgage?

A. Yes.

Q. Where was that mortgage made; at the Exchange National Bank in Muskogee?

A. Mr. Smith had the papers when I came to town; I don't know whether he got them at the bank or where he got them.

Q. You had nothing then to do with taking these mortgages except witnessing the signatures of the makers; is that it?

A. I did not.

Q. Do you know, Mr. Harris, how long the Geo. O. Richardson Machinery Company has been engaged in furnishing threshing machinery in Muskogee County?

A. The first to my knowledge was June, 1920. No, I take that back. In 1910 I bought one in Northwest Arkansas and had it shipped direct from the factory to Muskogee.

Q. Have they been selling machines continuously in Oklahoma since 1910?

A. Not to my knowledge.

CROSS EXAMINATION BY MR. BREWSTER:

Q. Mr. Harris, all of your transactions had in dealing with machinery, such as handled by defendant company, both buying and selling, has been under the written agreements which have been identified and introduced as plaintiff's Exhibit "C" and defendant's Exhibit "1;" were they not?

A. All with the exception of the rig I bought in 1910.

Q. And aside from that purchase, which I understand was the individual purchase by you, all of your negotiations have been under and pursuant to the terms of the contracts referred to in the last preceding question?

A. Yes.

Q. And were the sales of the machines, the shipment thereof, the settlements therefor, and all of the negotiations relative to any machinery sold, had and done according to the stipulations and agreements contained in said contracts of writing above referred to, with the exception of the 1910 purchase that you made from Northwestern Arkansas and which was shipped to Muskogee, Oklahoma?

A. As far as I know.

Q. Well, what I mean is, Mr. Harris, that you never purchased any machine or sold any except according to said contracts otherwise than the 1910 purchase?

A. No.

(Signed) E. A. HARRIS.

Pursuant to the understanding when the depositions were begun, the parties hereto stipulate and agree that all objections which could have been made as to the relevancy, competency or materiality or on other grounds, may be presented to the Court when these depositions are offered, with the same effect and of like force as though each objection had been made at the time the questions were asked or the exhibits offered in evidence.

State of Oklahoma, County of Muskogee, ss.

CERTIFICATE TO DEPOSITION.

I, W. R. Kirk, a Notary Public within and for said County and State, do hereby certify that the above named R. N. Smith and E. A. Harris, the witnesses whose names are severally subscribed to the foregoing depositions, were by me first duly sworn to testify the truth, the whole truth and nothing but the truth, in the case aforesaid, and that the depositions by them respectively subscribed, were by Mary Tingle, a proper person, reduced to writing in my presence and subscribed by the respective witnesses in my presence, and the same were taken on the 21st day of January, A. D. 1922, between the hours of eight o'clock A. M. and six o'clock P. M. of said day at the office of Linebaugh & Pinson, 907 Barnes Building, in the City of Muskogee, in the County of Muskogee, and State of Oklahoma, as specified by stipulation hereinbefore mentioned by and between the parties hereto, in lieu of the office of the County Sheriff, as specified in the notice hereto attached, and that I am not an attorney or a relative of either of the said parties, or otherwise interested in the event of said action.

Witness my hand and official seal at Muskogee, Oklahoma, this 21st day of January, A. D. 1922.

(Signed) W. R. KIRK,
Notary Public.

(Seal)

My Commission expires May 28, 1925.

PLAINTIFF'S EXHIBIT "A".

St. Joe-2M-12-20-OP&OCo.

ORDER FOR RUSSELL MACHINERY.

Geo. O. Richardson Machinery Co., St. Joseph, Missouri
(Incorporated)

Date .....19.....

Please manufacture or procure and ship for me to

_____ *at* _____
care of _____Ry., or by such other route as you may deem expedient, on or about_____or as soon thereafter as possible, the following machinery, with fixtures provided in current price list:

Q'T'Y	PRICE	Q'T'Y	PRICE
_____	Thresher _____		
_____			
_____	Feeder _____		
_____			
_____	Weigher _____		
_____			
_____			

_____This Thresher to be driven by _____
_____Engine running at speed of_____
_____R. P. M. and with a fly wheel_____
_____inches in diameter, _____Bbl. Water Tank with _____Trucks _____
_____Feet_____ply____Belt_____ Tank Pump outfit_____
_____
_____Farmer's Friend Wind Stacker for__x__Thresher for which I agree to pay two hundred and fifty dollars if 34 in. in size, two hundred and seventy-five dollars if 43-inch or 46 inch, or three hundred dollars if 50 inch or larger sizes, in notes, to be given separately, payable one half Sept., 192__, and one half September 1, 192__, with a fixed discount of $15.00 for actual cash down on Wind Stacker 46-inch Rear or less and $18.00 on Wind Stacker over 46-inch Rear.

I, the undersigned, agree to receive the above subject to conditions named below, to pay the freight and charges thereon from the factory, and further agree to pay to your order on the arrival of the goods at the place above named, the sum of _____Dollars
_____
_____
as follows:

Cash with order_____$_____ My note due____$____

Cash on arrival of machinery----$----, My note due--$--
My note due Sept. 1, 19----, for Wind Stacker, $------
My note due ----------$----------
My note due Sept. 1, 19--, for Wind Stacker, $----------
My note due ----------$----------
My note due----------, $------My note due------$------
My note due----------$------My note due------$------

(PRINTER' NOTE: The following quoted words appear on the left-hand margin of page 213 of Record: "I hereby acknowledge that I have received an exact copy of this Order.")

If all notes herein described are fully paid in cash on or before November 1, 19--, a cash discount of $---------- will be allowed from the amount principal and interest then due. Notes to bear interest from date at the highest legal rate, but if paid promptly at maturity only ----% to be charged, to be given on your blanks, payable at------Bank ----------, and I agree to give as security covering the above notes and all other notes that may now be outstanding from me to Geo. O. Richardson Machinery Company, a first mortgage or trust deed on goods herein purchased, and also all other property now in my possession on which I have heretofore included in mortgages given to you and further ----------
---------- ----------
---------- ----------

I further acknowledge and agree:

First. That the articles above described are purchased and sold under the warranty and agreements printed on the back hereof.

Second. That Geo. O. Richardson Machinery Company is a corporation incorporated under the laws of the state of Missouri, with principal office at St. Joseph, Buchanan County, Missouri.

Third. That this order is given subject to acceptance by said corporation and shall impose no obligation on said corporation until accepted in writing by one of its executive

officers at St. Joseph, Missouri, that no promises, whether by agent, employe or attorney concerning the articles herein purchased, the working of or warranty thereon, or the payments or security to be made or given therefor, shall be binding on said corporation unless made and ratified in writing by an executive officer at its home office. Any assistance rendered by any local agent, traveling salesman or expert after the warranty has been waived or fulfilled shall be deemed purely voluntary and such assistance shall not operate as an extention or revival of said warranty.

Fourth. That title to the articles herein purchased shall not pass until settlement is made and accepted by said corporation.

Fifth. That any one or more of the signers hereof may with the consent of said corporation add to or change the terms of this order without in any manner releasing the other signers from liability under it.

Sixth. In case suit is brought to enforce this order against me, I hereby agree to pay all attorneys' fees.

Seventh. In consideration of the expense incurred by said corporation in soliciting, investigating and taking this order, and manufacturing or procuring the goods for shipment, I promise and agree to pay all freight charges on said machinery from the point of shipment and for its return thereto, and 10 per cent of the price above stipulated, in cash, as liquidated damages, in case I should cancel this order or decline to accept said machinery.

P. O. ..... Sign here ..... (Seal)
Resides..miles..and..miles..from..Station
P. O. ..... Sign here ..... (Seal) (Pur)
Resides..miles..and..miles..from..Station
P. O. ..... Sign here ..... (Seal) (cha)
Resides..miles..and..miles..from..Station
..... (Seal)

Witness.....

Each of the articles above described is purchased and

sold as a separate and distinct machine at a stipulated and agreed price and subject to the following warranty and agreement and none other.

WARRANTY.

Such of the articles specified within as are of the Russell & Company's manufacture are warranted by it, also by the within named corporation, Geo. O. Richardson Machinery Company, St. Joseph, Missouri, to be of good material, well made, and with proper management capable of doing as good work as similar articles of other manufacturers working under the same conditions and on the same job. If said machiney or any part thereof shall fail to fill this warranty, written notice by registered letter shall be given to said Geo. O. Richardson Machinery Co., St. Joseph, Mo., and to the party through whom the machinery was purchased, stating wherein it fails to fill the warranty, and time, opportunity and friendly assistance given to reach the machinery and remedy its defects. If the defective machinery cannot then be made to fill the warranty it shall be returned by the purchaser to the place where received and placed on board cars and another furnished on the same terms of warranty, or money and notes to the amount represented by the defective machinery shall be returned, and no further claim be made on Geo. O. Richardson Mach'y. Company, but in no case shall the machinery be returned after five (five) days from the day it is first used except on notice duly given as above specified within said period of five days; and the use or possession of said machinery for the said period of five days shall be conclusive evidence that the warranty is fulfilled to the full satisfaction of the purchaser, who agrees thereafter to make no further claim on Geo. O. Richardson Machinery Company under warranty. It is expressly agreed that Geo. O. Richardson Machinery Company shall be liable only for the return of cash and notes payable to its order actually received by it for machinery returned under this warranty and not for freight paid, nor for any other machinery or

property taken in trade as part payment. It is further understood and expressly agreed that any breach of this warranty or any omission on the part of the company does not confer any right of damage for delay or loss of work or earnings or for other damages.

The separate prices herein referred to are based upon the vendor's list prices, and the amount to be credited for the return of any machine under this warranty shall be in proportion to the aggregate price herein expressed as the list price of the same machine is to the aggregate list price of all the machines herein ordered, and old machinery taken in trade shall not be taken into account.

In case any casting fail, through defect in its material, during the first season, such defective piece shall be replaced without charge, except freight or express charges, but on any claim for replacement of defective castings the defective piece shall be returned to Geo. O. Richardson Machinery Company, St. Joseph, Missouri, freight or express charges prepaid, and shall clearly show the defects.

Defects or failure in one part or attachment shall not condemn or be grounds for claiming renewal, or for the return of any other part. It is expressly agreed as a condition of this warranty, that the cylinder of the thresher shall run at the speed it was designed by the Russell & Company to run at; that the driving of any independent stacker, or any other device not furnished with the thresher, from any part of the same, shall invalidate this warranty as regards such thresher, unless such attachment shall be approved by said corporation, and be operated without change of speed, or impeding the operation of any part of the thresher. All warranties shall be invalid and void in case the machinery is not settled for according to above agreement, when delivered, or if this warranty is changed, whether by erasure, addition or waiver. Warranty rendered void shall be restored only by an agreement in writing and signed by an executive officer of the within named corporation.

Where special attachments, belting or hose are ordered

and furnished, the manufacturer's warranty only is extended. Second-hand and rebuilt machinery is sold without any warranty and at purchaser's own risk.

Rating and guarantee on Compound Engines are based on 150 pounds steam pressure.

PROPERTY STATEMENTS

are required in all cases. Fill out carefully, writing "nothing" where party claims nothing. A dash is not sufficient.

To obtain credit as indicated in the within order, I hereby certify that I am a _____man, of lawful
(married of single)
age and that I own in my own name and right____acres of deeded land in Section_____, Township_____ Range____, County of _____and State of _____, worth at a fair valuation $_____, and listed for taxation at $_____, with a total encumbrance of $_____. I have personal property worth at a fair valuation $_____, on which or a part of which are chattel mortgages securing unpaid claims aggregating $_____.

My total present indebtedness amounts to $_____, and I consider myself worth over all indebtedness $_____.

Of the indebtedness above specified, $_____ is for machinery which I have purchased and is as follows:

_____

_____

_____

I owe no debts and have no outstanding mortgages except as above stated.

Witness _____ Signature _____

To obtain credit as indicated in the within order, I hereby certify that I am a_____ man, of
(Married or Single)
lawful age and that I own in my own name and right

_____ acres of deeded land in Section _____, Township _____, Range _____, County of _____ and state of _____, worth at a fair valuation $_____, and listed for taxation at $_____, with a total encumbrance of $_____ I have personal property worth at a fair valuation, $_____, on which or a part of which are chattel mortgages securing unpaid claims aggregating $_____.

My total present indebtedness amounts to $_____ and I consider myself worth over all indebtedness $_____.

Of the indebtedness above specified, $_____ is for machinery which I have purchased and is as follows:

_____

_____

_____

I owe no debts and have no outstanding mortgages except as above stated.

Witness _____ Signature _____

INSTRUCTIONS TO BE OBSERVED IN TAKING ORDERS.

In filling out property statements, travelers must be particular to ascertain and insert the names of machine companies to which customers are already indebted, with the amounts of their claims and property mortgaged to them.

Any special parts or attachments desired must be specified in the order.

Take all orders in duplicate, having both original and duplicate signed by all parties. Make also an accurate copy. Send the original to our headquarters for your territory at once. Deliver the duplicate to purchaser. Retain the copy of the order for your own use. Note that no erasure, alteration or waiver of warranty is allowed. Never change an order

after signature. If mistake is made or change desired, take an entirely new order, then destroy the old one. See that original, duplicate and copy agree in every particular.

Each person owning real estate or other property, sharing as purchaser or surety in the credit granted, should sign one property statement and describe therein the property which he individually owns.

The order and property statements must be both signed and witnessed.

GEO. O. RICHARDSON
MACHINERY CO.
(Incorporated)

PLAINTIFF'S EXHIBIT "B".

St. Joe-1M-1-17-O. P. &. P. Co.

PURCHASER'S CONTRACT FOR SECOND HAND MACHINERY.

The Geo. O. Richardson Machinery Co., St. Joseph, Mo.:
(Incorporated.)

Dated at ----------191---.

Please procure and ship for me to ---------- at ----------, care of----------Ry., or by such other route as you may deem expedient, on or about ---------- or as soon thereafter as possible, the following machinery:

One second hand ---------- Engine No. --------
(Size and Kind.)

One second hand ---------- Thresher No. ---------
(Size and Kind.)

One second hand ..... Saw Mill No. .....
(Hand, Size and Kind.)

I, the undersigned, agree to receive the above subject to conditions named below, to pay the freight and charges thereon from factory, and further agree to pay to your order, on the arrival of the goods at the place above named, the sum of ..... Dollars and also to deliver on board cars .....
..... as follows:
(Give description of machinery traded for.)

Cash ....., $..... My note due ....., $.....
My note due....., $..... My note due ....., $.....
My note due....., $..... My note due ....., $.....
Notes to bear interest from date at ..... per cent, to be given on your blanks, payable at .....
..... Bank ..... and I agree to give as security covering the above notes and all other notes that may now be outstanding from me to The Geo. O. Richardson Machinery Co., a first mortgage or trust deed on the goods herein purchased, and also all other property now in my possession on which I have heretofore included in mortgages given to you, and further .....

As A Condition Hereof, it is fully understood and agreed:

First. That said machinery is purchased as second hand the purchaser having the privilege of examining the same before signing this order.

Second. That the machinery purchased is to be deliv-

ered in the condition in which it is found at the time of signing this order, and with no further warranty whatever.

Third. That this order is given subject to acceptance by the Geo. O. Richardson Machinery Co. (incorporated), that all special arrangements to repair or move the machinery purchased, or in any manner change the printed conditions of this order, shall be made in writing herein; and that no promises not embodied herein, whether by agent, employe, or attorneys, in respect to the payments, security or the machinery purchased, will be binding unless made in writing and ratified by said Corporation, by an executive officer at its home office.

Fourth. That this order is given subject to the previous sale of the machinery in question.

Fifth. That the purchaser shall receive the above machinery on the conditions named, provided it is found to be as described herein, and settle for same upon delivery; and such receipt shall be full evidence of satisfaction to said purchaser and no further claims or any kind shall be made against said corporation.

Sixth. That title to said goods shall not pass until settlement is made and accepted by said corporation.

Seventh. In consideration of the expense incurred by said corporation in soliciting, investigating and taking this order, and manufacturing and procuring the goods for shipment, I promise and agree to pay all freight charges on said machinery from the factory and for its return thereto, and 10 per cent. of the price above stipulated, in cash, in case I should cancel this order or decline to accept said machinery.

I acknowledge that I have received and read an exact copy of this contract.

P. O. .....Sign here..... (Seal) (Pur)
P. O. .... (Seal) (cha)
P. O. .... (Seal) (sers)
Witness .... (Seal)

PROPERTY STATEMENTS

are required in all cases. Fill out carefully, writing "nothing" where party claims nothing. A dash is not sufficient.

To obtain credit as indicated in the within order, I hereby certify that I am a_____man,
(Married or Single)
of lawful age and that I own in my own name and right ____acres of deeded land in Section_____, Town of _____, County of_____ and State of_____, worth at a fair valuation $_____, and listed for taxation at $_____, with a total encumbrance of $_____. I have personal property worth at a fair valuation $____, on which or a part of which are chattel mortgages securing unpaid claims aggregating $_____.

My total present indebtedness amounts to $_____, and I consider myself worth over all indebtedness $_____.

Of the indebtedness above specified, _____ is for machinery which I have purchased and is as follows:

_____

_____

I owe no debts and have no outstandng mortgages, except as above stated.

Witness: _____ Signature_____

_____

INSTRUCTIONS TO BE OBSERVED IN TAKING ORDERS.

In filling out property statements, travelers must be particular to ascertain and insert the names of machine companies to which customers are already indebted, with the amounts of their claims and property mortgaged to them.

Any special parts or attachments desired must be specified in the contract.

Take all orders in duplicate, having both original and duplicate signed by all parties. Make also an accurate copy. Send the original to our headquarters for your territory at once. Deliver the duplicate to purchaser. Retain the copy of the order for your own use. Note that no erasure, alteration or waiver of warranty is allowed. Never change an order after signature. If a mistake is made or change desired, take an entirely new order, then destroy the old one. See that original, duplicate and copy agree in every particular.

Each person owning real estate or other property, sharing as purchaser or surety in the credit granted, should sign one property statement, and describe therein the property which he individually owns.

The order and property statements m u s t both be signed and witnessed.

THE GEO. O. RICHARDSON
MACHINERY CO.
(Incorporated)

(The following appears in print at the side of the property statements):

The Geo. O. Richardson Machinery Co., (Incorporated). I recommend the within order for your acceptance. I have examined the County Records and find statements made hereon correct, and I consider the makers responsible. ---------- (to be signed by the party taking order).

PLAINTIFF'S EXHIBIT "C"

M. E. Fullenwider
Exhibit 1
Official Reporter

St. Joe-500-12-19—OP&PCo.

Commission Agreement No. ——

1 This Agreement, Made at St. Joseph, Missouri,

between Geo. O. Richardson Machinery Co., incorporated under the laws of the State of Missouri (proof of incorporation waived by party of the second part), with principal offices at St. Joseph, Mo., party of the first part, and E. A. Harris of Muskogee, County of Muskogee, State of Oklahoma, party of the second part.

Witnesseth, That the party of the first part agrees to furnish Machinery of The Russell & Co.'s manufacture, and Repairs and Attachments for same as hereinafter specified, on orders taken by said party of the second part, which have first been submitted to and approved and accepted by said party of the first part, by an executive officer of the party of the first part, at its home office, until October 31, 1920, provided it has them on hand not engaged. Also to supply a reasonable amount of advertising matter and all blanks required under this agreement, free of charge, except transportation, which said second party hereby agrees to pay.

To allow the party of the second part, as full compensation and consideration of transacting the business and fulfilling the conditions herein required, specified or implied, commissions as follows:

On Steam Traction Farm Engines, Russell Giant 30-60 H.P. Kerosene Tractor, Threshers and Water Tanks:

For cash on delivery or with order, 10 and 10 per cent

For one half cash on delivery, balance first fall, with interest 10 and 7½ per cent.

On one fall's time, with interest from date of delivery 10 and 5 per cent.

On two fall's time, with interest from date of delivery 10 and 2½ per cent.

On three fall's time, with interest from date of delivery (on steam engines or full outfits), 10 per cent

On Farmer's Friend Pneumatic Stackers (Special order and settlement required).
Up to and including 46" rear inside measurement $25.00; over 46" rear inside measurement $30.00
Arbitrary cash discount on Pneumatic Stackers up to and including 46" rear inside measurement, $15.00; over 46" $18.00.
On Saw Mills and Saw Mill Engines:
For cash on delivery or with order 10 and 5 per cent.
On time terms, one-third cash, one-third six months, one-third within year, with interest from date of delivery, 10 per cent.

On Repairs—Cash thirty days (see lines 59, 60 61) 20 per cent.
On other size gas tractors—special prices on request.
On Road Rollers—Special prices on request.
Time terms on Pneumatic and Sattley Attached Stackers, one-half in the fall of 1920 and one-half in the fall of 1921, orders to be taken on blanks provided for the purpose by said party of the first part.
Commissions under this contract are based on the printed price list in force at date of sale, which list is made a part of this contract, do not share in interest and expense of collecting, and are payable as follows: On cash sales, commissions shall be paid out of the cash; on other sales, proportionately out of cash and proceeds of notes when each note is paid in full.

As evidence of the amount of commission, other than cash, the party of the second part shall receive from the party of the first part Non-Negotiable commission certificates, bearing the same number as the notes, setting forth amount contained in each note, and when such note is due. Said commission

certificates shall not be transferred or assigned by second party, and when payable, shall at all times be subject to any account or obligation held against said second party by the party of the first part.

Provided, that no compensation shall be allowed or paid on any article taken back, whatsoever the cause; on any order taken and not filled; on any machinery not settled for; on any sale to irresponsible parties, or where foreclosure proceedings may at any time become necessary, and in any such case, Commission certificates, if issued, shall be void and shall be returned to party of the first part for cancellation.

The party of the first part shall have the right to renew, extend, abate or discount any note or notes taken under this contract, when in its judgment it may be necessary or desirable, and in all such cases the commission included in such notes shall be renewed, extended, abated or discounted in like manner; and when new notes are taken, certificates issued shall be returned and closed by new certificates based on the settlement obtained.

The party of the second part agrees: In consideration of the above, which is hereby assented to, to undertake to secure orders for the said articles on the following terms and conditions, to be strictly kept and performed, to wit:

To at all times during the term above named, in good faith maintain the reputation of the machinery covered by this agreement and use his best endeavors to secure orders for it in preference to any other made for like purposes.

To take and recommend orders only at prices and on terms within the limit authorized by the party of the first part and subject to the conditions and warranty contained in the blank orders furnished by the party of the first part, which blank orders shall be used in every case; to permit no machinery to be returned, and to refund no payment to a purchaser

unless due notice has been given to the said party of the first part, and its written consent obtained. Freight in all cases to be paid by the purchasers, or party of the second part.

To make repair settlement by payment in cash within thirty days from date of Invoice, it being understood and agreed that Commission specified above applies on repairs manufactured by THE RUSSELL & COMPANY only. Supplies and fittings will be furnished at net cash prices on application.

To take orders only from persons responsible beyond a doubt, or who will give good and sufficient security.

That all notes taken for machinery sold under this agreement shall be drawn to the order of the party of the first part, with interest from date, shall be on blanks provided by party of the first part, and payable at some responsible bank or express office; that the makers of all notes, which may be taken for the first party in pursuance of this agreement, shall, at the time such notes are taken, be men of known responsibility and good reputation for veracity and the payment of their debts in the localities where they reside, and that the orders from the makers shall be accompanied by property statements of the makers or endorsers setting forth that they own and hold in their own names unencumbered real estate worth at tax valuation over and above all exemptions a sum equal in amount to the deferred payment, and in the absence of such property statements said second party hereby guarantees the payment of all notes growing out of such sales; and this shall be sufficient evidence of such guaranty—demand, protest and notice of protest and non-payment being severally waived.

To retain a lien in favor of the party of the first part on all machinery sold.

To deliver no machinery to any customer until

the same shall have been fully settled for in accord-
73 ance with terms of order given for same and accepted
by us.

74 That if the party of the second part shall use,
or allow to be used, any machinery, or parts of ma-
chinery, or deliver same to any customer or other
75 person before it is fully settled for, said party of
76 the second part shall account to said party of the
first part, on demand, for the price of such machin-
ery, or parts, and shall waive all claims under the
77 warranty for any machinery so used or delivered.

That if the party of the second part shall rob, or
by neglect allow others to rob, any machinery of any
of its parts, so as to in the least degree hazard its
78 sale or its successful working, said party of the sec-
ond part shall be fully bound to the party of the first
79 part as the *bona fide* purchaser of such machinery,
and shall further waive all claims under the war-
ranty on any machinery so robbed.

80 To make full and immediate report of each sale,
using blanks furnished for the purpose, setting forth
name and address of purchaser, the size, factory
number and kind of machinery sold, date of sale and
81 terms of settlement; to remit promptly to the party
of the first part the proceeds of each sale, less com-
mission on cash portion.

82 The party of the first part shall be under no
obligation by reason of this agreement to furnish
83 the party of the second part with sample machinery
or stock repairs or attachments, but should any be
by special agreement so furnished, it shall, while in
84 the hands or control of the party of the second part,
remain and be considered as consigned property be-
85 longing absolutely to the party of the first part, and
the party of the second part shall provide suitable
86 storage to protect it from the weather or other dam-
age; shall pay all taxes and insurance which may
87 be taken therein and shall make no charge for hand-
ling or storing the same. Such machinery, repairs

and attachments shall at all times be subejct to the order and control of the party of the first part, and orders taken by the party of the second part for the same shall be taken subject to the same conditions as those taken for other machinery. Should any such consigned machinery be reshipped at the order of the party of the first part, freight advanced thereon by the party of the second part shall follow the same and shall not be charged back to the party of the first part without consent in writing.

To deliver to the party of the first part, or on its order or demand, all repairs on hand belonging to said party of the first part, free of freights.

To be accountable to and reimburse the party of the first part, or assigns, for any losses or expenses resulting from any deviation from this agreement.

That the party of the first part may in any special case waive any of the requirements herein named, but such waiver shall not be construed as a general waiver of contract or any other requirements thereof.

That no verbal agreement bearing on transactions under this contract shall be binding on the party of the first part.

That no agreement in writing shall be valid as against the party of the first part, until the same shall have been ratified by and registered in the Home Office, St. Joseph, Mo., and signed by an executive officer of the party of the first part.

The failure of the second party to comply with any requirements herein expressed shall be valid grounds for terminating this agreement.

That said second party shall stand all cuts or discounts from list prices, made to purchasers on all machinery sold, other than cash discounts herein authorized, whether sale is made by him or through the assistance of, or by a representative of the party of the first part.

That should the party of the first part render

assistance in making sales, securing same or making settlements, such action shall not relieve the said second party from any liability under this contract, nor restore warranty if rendered void.

That all settlements shall agree exactly with terms of order taken from purchaser.

That the party of the first part reserves the right, and the party of the second part concedes it, to sell any of its machinery, whether mentioned in this contract or not, direct to any city, town, county or state, or any representatives thereof, or to the federal government, or to another manufacturer, or road contractor any place in the United States.

It is further agreed and understood that this does not include or cover second-hand machinery, or any machinery manufactured or furnished by said first party and not herein specified; but should said first party by special agreement in writing negotiate the sale of any such machinery through said second party, all of the provisions of this contract shall apply to such sale, except those fixing price, terms of sale and rates of commission, which shall be special in each case. All orders for second-hand machinery to be taken on special blanks to be furnished by said party of the first part for that purpose.

It is further expressly understood and agreed that the sole and only authority which the said second party has to act for said first party is to solicit orders for the property mentioned herein, and on such orders as may have been accepted and filled, to receive cash or other proceeds to first party's order, and that second party is the fiduciary custodian of all the property or its proceeds, which may be delivered to him under this contract, and has no authority to handle or use it except as provided herein, and has no authority to bind first party by any agreements, acts or omissions, or by accepting or

receiving any service in legal proceedings; and that
121 all machinery and other property received by said second party under this contract shall continue to be the property of said first party until settlement
122 has been made and accepted by said first party; and all notes and other proceeds from sales of property shall be the sole property of the party of the first
123 part, subject to no offset or counter claim, and in no case shall they, or any part of them, be used by the party of the second part.

124 This contract shall not be binding upon the party of the first part until the same shall have been reg-
125 istered at the Home Office of the party of the first part, St. Joseph, Missouri, and signed by an officer of the Company.

GEO. O. RICHARDSON
MACHINERY CO.
Incorporated.
(Signed) By JNO. R. MYERS, Prst.
Party of the First Part.
(Signed) E. A. HARRIS,
Party of the Second Part.

Registered at St. Joseph,
Missouri, this -- day of ------, 19--.

(Stamp appearing thereon as follows:)
JNO R. MYERS, Apr 26 1920. St. Joseph, Mo.

(Endorsed as follows:)
No. ----- Commission Agreement between Geo. O. Richardson Machinery Co., Incorporated, and E. A. Harris, Muskogee, Okla.

St. Joseph, Missouri. Territory in which the party of the second part expects to solicit orders: Muskogee, Muskogee Co., Oklahoma. Date April 22nd, 1920. Ex-

pires October 31, 1920. *Please Read Your Contract.* Made by R. N. Smith.

PLAINTIFF'S EXHIBIT "D"

DEALER'S COMMISSION AND SALES AGREEMENT.

This agreement, Made at St. Joseph, Missouri, between Geo. O. Richardson Machinery Co., incorporated under the laws of the State of Missouri (proof of incorporation waived by the party of the second part), with principal offices at St. Joseph, Missouri, party of the first part, hereinafter, for the purpose of this agreement, called the Company, and Harris Smith Machinery Company of Muskogee, County of Muskogee, State of Oklahoma, party of the second part, hereinafter called the Dealer.

Witnesseth, That this agreement covers the following machinery, manufactured by The Russell & Company of Massillon, Ohio, viz:

——Russell Tractors and equipment——
——Russell Steam Engines and equipment——
——Russell Threshers and attachments ——
——Russell Water Tanks ——

That the Company agrees

(1) To furnish machinery of the kinds and sizes above set forth and repairs and attachments for same on orders executed by the Dealer or taken by Dealer, either of which first shall have been submitted to and approved and accepted by the Company in writing by an executive officer of the Company at its home office until October 31, 1921, provided it has it on hands not engaged and subject to the further provisions of this agreement.

Discounts

(2) To allow the Dealer as full compensation and consideration for the transaction of business and fulfilling the conditions herein specified or implied, subject to paragraph 20-a, discounts (except on Massillon Farmers Friend

Wind Stackers), from prices shown in machinery price lists, issued by Company and current at time of sale—which prices will be subject to change without notice—as follows:

(a) Twenty-five per cent (25%) f.o.b. factory for all cash on delivery when the Dealer places his own advance order and makes an outright purchase of new machinery for purpose of resale.

(b) Twenty per cent (20%) f.o.b. factory for all cash on delivery when sale is made to customer through the Dealer for the account of the Company.

(c) Fifteen per cent (15%) f.o.b. factory when all notes taken in settlement for machinery sold are paid in full on or before October 25th, 1921.

(d) Twelve and one-half per cent (12½%) f.o.b. factory when notes, taken in settlement for machinery sold, mature and are paid at least one-half on or before October 25th, 1921, and the balance mature and are paid on or before October 25th, 1922.

It is advisable on all time deals to obtain a substantial cash payment on delivery.

(e) Wind Stackers f.o.b. factory, 10 per cent when paid not later than one-half Oct. 1st, 1921, one-half Oct. 1, 1922. Must be sold to user at the fixed price in force at date of sale and on terms then established. 16 per cent when paid all cash on delivery, providing balance of machinery is purchased on same basis.

All exchange in collecting drafts or checks in excess of one-eighth of one per cent will be deducted from Dealer's commission. Notes for the purchase price of Wind Stackers and Sattley Stackers must invariably be given separately and apart from the notes given in settlement for the remainder of the machinery sold, otherwise the correction will be made at the expense of the Dealer.

On time sales where deferred payments extend be-

yond the first fall, the Dealer will have the option to cash the notes, up to October 25th, 1921, by paying the Company the one fall price, based on one fall discount (2c), together with the highest legal contract rate of interest from the date of the notes, provided that said Dealer is not in arrears with the Company, on account or any other evidence of indebtedness.

Second Hand Machinery.

The discounts hereinbefore set out are not to apply to second hand or rebuilt machinery, which the Company may from time to time describe in published lists. Net prices will be quoted from the Home Office, or from the Branch House covering the particular territory of the party of the second part.

NOTE:—In every case customer's notes must draw interest at the highest rate allowable by contract, from the date the machinery is delivered.

Repairs Discount.

(3) To furnish the Dealer repair parts, of the Russell & Company's manufacture, on board cars at factory or from the stock at the Company's warehouse, if the Company has such parts on hands, at The Russell & Company's list price thereon, less a discount of 20%, terms net cash, except said discount shall not apply to such parts as are listed "net repairs" or "supplies", on which parts special net prices will be furnished on application. See paragrah 23.

(4) To warrant all machines covered by this contract to be well made, of good material and in a workmanlike manner, and to be capable, when properly handled, of doing as good work, operating under the same conditions, as similar articles of other manufacture. That it will replace f.o.b. cars factory Massillon, Ohio, any defective piece or part of The Russell & Company's manufacture, within the one season, including the date of delivery of machine containing the alleged defective piece or part, but

such defective piece or part must be returned, transportation charges prepaid, to the Company at its home office, for inspection and credit if it clearly shows defect, and the furnishing of said part, by the Company f.o.b. its factory or warehouse shall be full compensation for any loss or damage suffered by the Dealer or purchaser by reason of said defective part or parts.

(5) To furnish the Dealer, upon request, free of charge except transportation, catalogs and such other advertising matter as it may issue or have, covering machinery listed herein. To furnish the Dealer, upon request, such electrotypes as it may have for Dealer's use in newspaper advertising, but such electrotypes shall remain the property of the Company and shall be subject to the Company's recall at any time.

(6) To grant the Dealer the right, but not exclusive, to sell the within described machinery at Muskogee, County of Muskogee, State of Oklahoma, in that portion of Oklahoma named in supplemental agreement attached hereto.

The Company reserves the right to sell machinery of any sort to cities, towns, townships, counties, or the officers or representatives thereof, or to manufacturers, owners or operators of grading, roadmaking, ditching or rock crushing machines, or to schools and colleges or institutions—in all such sales the Dealer waives commission, unless by special arrangement in writing the Company should agree to allow the Dealer a special commission for his help in making such sales.

The Dealer Agrees

(7) To thoroughly advertise Russell machinery in his territory, to diligently canvass his territory for purchasers, in all reasonable and proper ways to promote the trade and interests of the Company, to receive and pay transportation charges on and thoroughly distribute to prospective purchasers such catalogs and other advertising matter as the Company may furnish.

(8) (a) To sell Russell machinery in preference to any other make and to not sell other similar machinery of other makes, except in such cases where the first has earnestly tried to sell Russell machinery. (b) to not solicit, or to take orders from, or deliver any Russell machinery to any party residing outside of territory assigned to Dealer without first obtaining written consent of the Company or of the Dealer in whose territory he desires to make such sale or delivery. (c) To hold the Company liable in no case for any trespass committed by another on the rights of the Dealer. (d) To furnish the customers to whom he sells necessary service and instructions in the care of their machinery, including adjustments that may be required from time to time, and not to call on the factory or branch house for assistance except in cases where there is apparent defect in material.

(9) To not transfer this agreement nor to assign any rights contained herein.

(10) To give no warranty on any machinery, furnished by the Company and sold by the Dealer, other than the warranty contained in this agreement or such warranty as may be contained in the order blanks furnished by the Company, especially for the machine or machines listed herein.

(11) That any machine or machines or repairs or attachments, furnished by the Company, while in the Dealer's hands or control, not fully paid for, shall remain and be considered as consigned property belonging absolutely to the Company and the Dealer shall pay the freight charges thereon, shall provide suitable storage, shall protect the machinery from the weather, shall pay all taxes and insurance taken thereon, and shall make no charge for handling or storage of said machinery.

(12) That the responsibility of the Company, for loss and damage, shall cease upon the Company's delivery of any machine or machines or parts, ordered by Dealer, to a common carrier and obtaining the carrier's

clear receipt therefor; that the Company makes no warranty or representation of any kind other than those contained in this agreement as to the goods sold thereunder or the terms of settlement therefor; that all claims for shortage must be made by the Dealer immediately on receipt of the shipment upon which shortage is claimed, otherwise no claim will be met or allowed.

(13) That if the Dealer shall deliver any machinery listed or manufactured by the Company, its successors or assigns, or any part of the same, to any customer or any other person before taking a regular order from the purchaser, or before submitting the said order to the Company at its Home Office, and obtaining its approval, or before it is fully settled for in cash or notes as herein required, said Dealer agrees and binds himself, without further action, to account to said Company, on demand, in cash for the net price of such machinery, together with interest from day of delivery. Said Dealer agrees to waive all claims under warranty and protect the Company from all such claims on any machinery so delivered without settlement or without an order approved by Company.

(14) That all orders for machinery or repairs or attachments, submitted to the Company and approved by it, are subject to its ability to procure and deliver same to a common carrier in time for delivery in accordance with the terms of the order; that the Company is hereby released from any and all liability for its failure to fill the terms of this agreement if such failure shall be due to floods, fires, strikes, accidents, or the failure of manufacturers to deliver materials, machinery or equipment, or any cause incident to the business and not within the control of the Company; provided, further, that if the Company is delayed or is unable to produce or procure machines sufficient to fill all approved orders it shall have the right to make allotments, of such machines as it may have, among its customers, Dealer herein included, in such manner as it may elect.

(15) That when any traveling agent or employee of the Company shall in any way render any assistance to the Dealer, either in making a sale or otherwise, he shall be considered solely the employee of the Dealer, and no such act of such traveling agent or employee shall in any way bind the Company.

(16) To be accountable to and reimburse the Company, its successors and assigns, for any losses and expenses resulting from any deviation from this Agreement, or from the Price Lists of the Company, all of which are hereby made a part of this Agreement, and for attorney's fees, costs or other expenses, to which the Company may be subject by reason of such deviation or incur in enforcing this Agreement by reason of noncompliance, defalcation or otherwise, on the part of the Dealer.

It Is Mutually Understood and Agreed

(17) That the Company reserves the right, at any time, as it may see fit, to discontinue any model of any machine or to revise, change or modify the construction rating, or design of said machine or any part thereof.

(18) That all prices quoted shall be f. o. b. cars factory Massillon, Ohio, and that all freight and transportation charges on machines or parts shall be paid from the factory by the Dealer or purchaser in addition to the net price of said machine or part.

Commissions.

(19) (a) That commissions on all machines sold under this agreement shall be calculated on the basis of the list price in force at the time the order of the Dealer or purchaser is received by the Company. (b) That the Company reserves the right to raise or lower list prices, *without notice*, or to raise or lower discounts herein by giving the Dealer 10 days notice of such changes. (c) That if any machines or parts thereof are sold at less than the list price, with or without the consent of the Dealer, the amount of the discount so allowed is to be

deducted from commission of the Dealer; it being the intent of this agreement that the net price, to be received by the Company on any machine sold, is fixed and shall not be influenced by any discount from list price allowed the purchaser, the commission if any, to the Dealer being the excess realized, from the machinery sold, over and above the net price reserved herein by the Company, and all other deductions and allowances of any kind shall be deducted from the commission of the Dealer unless expressly authorized by the Company in writing and signed by an executive officer of the Company.

Commission Certificates.

(20) (a) That in a sale whose terms comply with 2-C, the commission certificates originally will be issued on a basis of 2-D, with the provision that if the notes are actually paid on or before maturity, the commission then will be changed to correspond with 2-C; also in a sale made on the basis of 2-D the discount from list will be figured on a basis of only 10 per cent, but if all the notes are paid at maturity, the commission will then revent to the 2-D basis.

(b) The commission allowed will be issued in the form of non-negotiable certificates, each of a pro rata part of each season's payments, made payable to the Dealer under the conditions hereinafter set forth; or in the form of a special certificate by consent of both parties to this agreement; neither of which shall share in interest and expense of collection. When the payments of any one season are divided into two or more payments, either cash or notes or both, the certificates are to be made payable when all of said season's payments have been collected in full. (The word "season" as herein used covers a period from the 1st of January to December 31st of same year.)

(c) The Company, its successors or assigns, shall have the right to renew, extend, abate or discount any note or notes arising out of any sale made under this

agreement, when in its judgment it may be necessary or desirable; and Company shall not be liable to Dealer for more than the pro rata share of the face of the certificate for amount then paid in cash.

(d) Commission certificates issued in any particular sale shall become null and void if the machinery is repossessed by private agreement or bid in upon any sale on execution, attachment or foreclosure.

(e) Certificates are non-negotiable and non-transferrable and when due and payable must be forwarded to home office for remittance, subject, however, to the rights of the first party to apply the amount due or any part thereof to all claims, debts, liabilities or obligations of the dealer, due or to become due to the Company.

Chattel Mortgages.

(21) That Company is to retain a lien on the machinery sold until it is paid for, where the laws of the state in which the Dealer resides or in which the machinery is sold recognizes a chattel mortgage lien. If the Dealer should omit to take a chattel mortgage, securing all the notes given for the purchase price, which mortgage must be exclusively and invariably a first lien on all the machinery sold, Dealer does hereby become, under the provisions of this Agreement, endorser and guarantor, with or without notice of payment on said notes growing out of such sale. Said Dealer to include with the machinery sold other unencumbered property as additional security where it is possible to so obtain it. Chattel mortgages must be carefully and properly filled out, executed, acknowledged and immediately recorded, or filed, according to the laws relating to such instruments in the state or territory where the purchaser resides, and a certified copy filed, or the original if recorded, sent to Company, with the notes taken in settlement for the machinery, together with any collateral notes or other securities taken.

Second Hand Machinery Taken in Trade.

(22) That in any sale made by either Dealer or by an officer, salesman or employee of Company for the account of Dealer, in which sale second-hand machinery is taken as a part of the proceeds of Company on such sale, Dealer hereby waives any claim for commission and agrees that no commission will be paid Dealer until Company has been provided with its full net price plus any repairs, rebuilding expense, freight and 20 per cent of original net investment in said second-hand machinery as selling expense out of the sale of said second-hand machinery. The Dealer has the right to pay in cash to the Company at the time of acceptance of new machinery order, the amount of the investment of Company in second-hand machinery, and receive said second-hand machinery as his own property in full of all commissions and compensation in said sale. In case Dealer shall not purchase such second-hand machinery immediately on acceptance of new machinery order and forward cash for said second-hand machinery to the amount of the investment of Company, and if said Company shall see fit to ship second-hand machinery to any other point for the purpose of selling it, the Dealer hereby waives any claim for commissions or compensations until Company realizes its full investment including commission on resale.

Repairs (See Paragraph 3).

(23) (a) That all repairs ordered by the Dealer will be shipped to the Dealer at current list prices, subject to discount.

(b) That all repairs ordered by Dealer to be shipped direct to customer shall be charged to dealer or if ordered C. O. D. the Dealer shall receive credit for the difference between the net price on repairs shipped and the amount received by the Company on the C. O. D. shipment less cost of collection. Should the Dealer order repairs shipped to customer and customer refuse or fail to accept such repairs, the Dealer hereby agrees to reimburse the Com-

pany in cash for transportation charges accruing both ways.

(c) No discounts shall be allowed on repairs and supplies shipped to others than the Dealer, on orders not received through Dealer.

(d) Repairs and supplies not manufactured by The Russell & Company are not governed by the discount herein given.

(24) That this contract may be cancelled by either of the parties hereto upon giving written notice thereof to the other party, but such cancellation shall not affect terms of settlement for any machine or parts already ordered by the Dealer, except at the option of the Company.

(25) That this instrument contains the entire agreement between the parties hereto and no representative of the Company has any power to waive any of its provisions to modify or change any of its terms unless such changes are made in writing and are approved in writing by an executive officer of the Company.

(26) That this agreement shall not be valid and binding upon the Company until signed by the President or the Secretary or other executive officer of the Company.

Given under our hands this ____ day of _____ 19__.

GEO. O. RICHARDSON
MACHINERY CO.,
By Jno. R. Myers, Prst.

Witness to Company's signature.

The Dealer hereby acknowledges that he has read this agreement and fully accepts its provisions and conditions.

HARRIS-SMITH MILEY CO.,
Dealer.

(Signed) E. A. Harris,
R. N. Smith.

Witness to Dealer's Signature.

(Stamped on the face is the following):
Jno. R. Myers, Nov. 8, 1920, St. Joseph, Mo.

SUPPLEMENTAL AGREEMENT.

Supplemental Agreement attached to, and hereby made a part of dealers' commission and selling agreement entered into this day between the George O. Richardson Machinery Company, a corporation of St. Joseph, Missouri, herein called the Company, and the Harris-Smith Machinery Company, (composed of E. A. Harris and R. N. Smith) of Muskogee, Oklahoma, herein called the dealer.

The dealer at his own expense agrees to diligently canvas that portion of Oklahoma lying east of the western line of the following counties: Washington, Tulsa, Okmulgee, Okfuskee, Hughes, Coal, Atoka and Bryan, and do all work of selling, delivering, settling and expert work on Russell Machinery sold and delivered within the territory named, also to furnish a reasonable amount of assistance on collections.

The Company agrees that if the dealer shall well and truly fill the obligations in accordance with the proceeding paragraph, it will allow to the dealer five per cent (5%) discount or commission in addition to the printed discounts in original agreement of which the supplemental agreement is made a part. The company further agrees that this five per cent (5%) discount shall be paid

in cash from cash proceeds of sales, where paid all in cash, and on time sales shall be paid when purchaser has completed payment in cash of the amounts maturing in 1921.

This supplemental agreement shall not in any way waive the rights of the dealer to take advantage of the privilege extended him under paragraph 2 to cash notes up to October 5, 1921, and shall not be construed to waive any of the other provisions of the original agreement.

Given under our hands this ------ day of ---------- 19-----.

GEO. O. RICHARDSON MACHINERY CO.,
(Signed) By Jno. R. Myers, Prst.

HARRIS-SMITH MACHINERY COMPANY,
(Signed) E. A. Harris,
R. N. Smith.

(Stamped on the face is the following):
Jno. R. Myers, Nov. 8, 1920, St. Joseph, Mo.

MR. MOORE: I just want to offer in evidence, this advertisement.

NOTE BY REPORTER: At this point, Mr. Moore hands to the reporter, an instrument which is marked and identified as Exhibit 3.

MR. PINSON: No objection.

NOTE BY REPORTER: Exhibit 3, having been offered in evidence on behalf of the plaintiff and having been received in evidence by the court, without objections on

behalf of the defendant; a full, true and correct copy of said Exhibit 3, being in words and figures as follows, to-wit:

"M. E. Fullenwider
Exhibit 3
Official Reporter

Russell Tractors—'Steam or Oil'. Russell Threshers for 'distinguished service' The Old Reliable Russell Line. (Picture of Tractor). We will gladly mail catalogue. Geo. O. Richardson Machinery Co., St. Joseph, Missouri, Wichita, Kansas.

BY MR. MOORE: I want to read the affidavit of John A. Scott which by agreement may be offered and received here as part of the evidence on behalf of the plaintiff.

NOTE BY REPORTER: At this point, Mr. Moore reads to the court, the said affidavit of John A. Scott being marked as Exhibit "4". Said Exhibit 4, having been offered in evidence on behalf of the plaintiff and having been received in evidence by the court, without objections on behalf of the defendant; a full, true and correct copy of said Exhibit "4", being in words and figures as follows, to-wit:

"M. E. Fullenwider
Exhibit 4
Official Reporter

In the District Court of the United States for the Western District of Oklahoma.

Hon. John H. Cotteral, Judge.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a corporation, Defendant. No. ——.

Affidavit of plaintiff in opposition to motion to quash service of summons and to vacate the judgment rendered in the State Court on October 23rd, 1920:

State of Oklahoma, Oklahoma County, ss.

John A. Scott of lawful age being first duly sworn deposes and says:

That affiant is the plaintiff in the above numbered and entitled cause, and states that this action was commenced in the District Court of Oklahoma County in the State of Oklahoma on September 10th, 1920; that the defendant Company is a foreign corporation, incorporated under the laws of the State of Missouri and having its main office and principal place of business at the city of St. Joseph in the said state; that it also has a branch office at the city of Wichita in the State of Kansas; that on April 21st, 1903, the defendant Company filed certified copies of its Articles of Incorporation in the office of the Secretary of State of the Territory of Oklahoma, and at the same time filed an appointment of Charles E. Riney of Blackwell, Oklahoma, as it's agent for the service of process upon it within the said Territory, afterwards the State of Oklahoma; that it continued the appointment of the said Riney in force until January 17th, 1911, when it filed with the Secretary of State of the State of Oklahoma a written revocation of said Riney's appointment, all of which appears by certified copies of said Articles of Incorporation, of the appointment of said process Agent, and of the revocation thereof, under the hand and seal of the Secretary of State, and which are hereby referred to and are made a part of this affidavit; that the said corporation made no other appointment of a process Agent in the said State of Oklahoma and had no such Agent from and after said January 17th, 1911, nor on September 10th, 1920, when the summons in this cause was served, by delivery by the Sheriff of Oklahoma County, Oklahoma, to the duly elected, qualified and then acting Secretary of State of the State of Oklahoma, at the said County of Oklahoma.

That notwithstanding the revocation of the appointment of the said Riney as process Agent aforesaid and

a failure to make any other appointment, the said defendant corporation, continued as theretofore to carry on its business year after year within the State of Oklahoma, at divers and sundry places therein by advertising for sale its goods, wares, machinery, attachments, parts and repairs, and soliciting, taking and filling orders from the public within said State, up to and including the threshing season of the year 1920, and of September 10th, 1920.

That on said September 10th, 1920, said Geo. O. Richardson Machinery Company was, and had been for several years prior thereto, continuously engaged in the State of Oklahoma as a part of its general business therein of selling and delivering threshing machinery, including engines, separators and attachments, and of selling and delivering in said State, parts and repairs for such machinery and had for this purpose kept at divers places within the State of Oklahoma, to-wit: at the cities of Muskogee and Cordell, on said September 10th, 1920 and at times prior thereto, agents, factors, bailees for the sale of said goods, parts and repairs on a commission basis; such machinery, parts and repairs having been consigned to such agents, factors and bailees prior to sale and not in response to orders from customers and were so kept awaiting sale, constituting stocks of machinery out of which orders were filled when taken, the said machinery and parts and the proceeds from the sale thereof belonging to the defendant Company, and kept in said State of Oklahoma until sold.

That at the city and county of Muskogee the defendant kept and had for sale during the spring and summer of 1920, throughout the threshing season, its machines and parts, and through its agents, bailees and factors, residing in said city, sold and delivered its said machines and parts to many divers and sundry persons residing in said Muskogee County; that it sold its said machines for cash, and on time, and part for cash and partly on time, making contracts in reference thereto in the State

of Oklahoma, and to be performed therein; that in the financial transactions growing out of said sales in the State of Oklahoma, and in payment for the machinery, parts and repairs, by it so sold and delivered, the defendant corporation took many notes payable to its own order, at banking houses within the said State, which notes were in many cases secured by mortgages on the chattel property of the purchasers, including the property so purchased of defendant, as well as other property.

That as instances of sales in the said County of Muskogee, and of taking notes in payment, or part payment of same, and of taking mortgages to secure said notes, the said defendant corporation caused to be filed of record, with others of similar import, in the office of the County Clerk of Muskogee County, certain chattel mortgages, numbered therein 135982; 135983; 135984; 135985; 135986; 135987; 135988 and 141490, certified copies of same being now furnished, and hereby referred to and made a part of this affidavit.

That at the same time and in like manner during the year 1920, the defendant corporation carried on a similar business at the city of Cordell, and perhaps at other places within the said State of Oklahoma.

Affiant further states that the said defendant Company during the year of 1920, both prior and subsequent to September 10th, 1920, carried on an advertising and selling campaign of its goods, wares and merchandise, and in the month of April, 1920, exhibited a Russell Gas Tractor and Separator, constituting a complete threshing outfit and set the same up and in running order at the Tractor Show at the city of Cordell in the said State of Oklahoma, the same being in charge of one F. G. Weiland, the general Agent and Branch Manager of the defendant Company, at it's office in Wichita, Kansas; and, after said show was over said machine was left with C. H. Murdock, the defendant's Agent at Cordell, Oklahoma, and by him disposed of by sale at that place; that on or about

September 15th, 1920 the said defendant Company subscribed for a half page of advertisement of it's said goods and merchandise in the Convention Program of the Oklahoma Thresherman's Association, held at Oklahoma City, all of which appears by letter of the defendant Company under date of September 15th, 1920 and by it's advertisement appearing in said Convention Program, which are hereby referred to and made a part of this affidavit. That the defendant paid to this affiant, personally, the sum of $20.00 for its said advertisement in said Thresherman's Convention Program.

Affiant hereby identifies a letter under date of March 15, 1915, addressed by the defendant corporation to this affiant, for the purpose of showing that it was engaged in business in the State of Oklahoma at the date of said letter and threatened to withdraw from business if the purported measure therein referred to, pending before the regular session of the 1915 Oklahoma State Legislature, should become a law; that the proposed act was defeated and was never entered upon the statute books of the State of Oklahoma. Affiant also hereby identifies another letter written by the defendant corporation to this affiant, bearing date October 25th, 1920, showing that the said Company was engaged in business in the State of Oklahoma at the date of the said letter, which letter is hereby referred to and made a part of this affidavit.

Affiant also identifies a letter written by the defendant corporation to Mr. W. H. Newsom, President, under date of April 8th, 1920, tending to show the said corporation was at that time transacting business in the State of Oklahoma, which letter is hereby referred to and made a part of this affidavit.

Affiant further states that he has personal knowledge of the said matters by reason of the fact that he has had many business transactions with the defendant Company in purchasing machinery, parts and repairs from them during said time, and in acting as Agent in making sales

for them, and in dealing with their agents and representatives, and observing how the defendant's business in the said State of Oklahoma was being conducted and carried on.

(Signed) JOHN A. SCOTT.

Subscribed and sworn to before me this 7th day of November, 1921.

JORDAN R. JONES,
(Seal) Notary Public.

My commission expires July 23, 1923.

BY MR. MOORE: The plaintiff offers in evidence, the affidavit of C. H. Murdock, made on November 2, 1921, before Robert Steele, a Notary Public of Washita County, Oklahoma.

NOTE BY REPORTER: At this point, Mr. Moore, reads to the Court, Exhibit "5". Said Exhibit "5" having been offered in evidence on behalf of the plaintiff and having been received in evidence by the Court without objections on behalf of the defendant; a full, true and correct copy of said Exhibit "5" being in words and figures as follows, to-wit:

"M. E. Fullenwider
Exhibit 5
Official Reporter

C. H. Murdock, Inc., Cordell, Oklahoma, Dodge Brothers Motor Vehicles.

In the District Court of the United States for the Western District of Oklahoma.

Hon. John H. Cotteral, Judge.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a corporation, Defendant.

AFFIDAVIT OF C. H. MURDOCK.

State of Oklahoma, Washita County, ss.

C. H. Murdock of lawful age being first duly sworn, deposes and says:

That this affiant resides at Cordell, Oklahoma, Washita County and has resided in Washita County for twenty-nine years; that he is engaged in a business of Automoble sales and was present at the Tractor Show held in the city of Cordell in the State of Oklahoma in the month of April, 1920; that they had on display one of Geo. O. Richardson Separator belonging to him, and also one Gas Tractor which was the property of the Geo. O. Richardson Machinery Company which was sent or loaned to C. H. Murdock for advertising purposes at the show. Further Mr. F. G. Weiland, Branch Manager of Wichita, Kansas, together with his two assistants, Mr. Sico and Mr. Shipps were at the show assisting the affiant in demonstrating the machinery for sale purposes.

(Signed) C. H. MURDOCK.

Subscribed and sworn to before me this second day of November, 1921.

(Signed) ROBERT STEELE,
(Seal) Notary Public.

My Commission expires March 14, 1922.

BY MR. PIXSON: Of course, Your Honor understands that we are not offering the objection to the relevancy to any of this evidence; we expect to cover that in the argument; we later probably will offer an objection to each one of these, because, each one of these probably raises the question of law whether it is material or relevant to the issues and we are just reserving that until we get before the court.

BY MR. EVEREST: These are being offered in evidence,

being the same that were offered before Judge Cotteral and he has the right to make his objections as to the competency and relevancy.

BY MR. PINSON: That's what I say, I am going to use them in the argument.

BY MR. EVEREST: Yes, sir, that was the agreement.

BY MR. MOORE: We offer the affidavit of James H. Kimball.

NOTE BY REPORTER: At this point, Mr. Moore, reads to the court, the affidavit of James H. Kimball, being Exhibit "6" said Exhibit "6" having been offered in evidence on behalf of the plaintiff and having been received in evidence by the court without objections on behalf of the defendant; a full, true and correct copy of said Exhibit "6" being in words and figures as follows, to-wit:

"M. E. Fullenwider
Exhibit 6
Official Reporter

In the District Court of the United States for the Western District of Oklahoma.

Hon. John H. Cotteral, Judge.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a corporation, Defendant. No. —.

AFFIDAVIT OF JAMES H. KIMBALL.

State of Oklahoma, Kiowa County, ss.

I, James H. Kimball, of lawful age being first duly sworn deposes and says:

That affiant is now and has been fifteen years last past a resident of Kiowa County in the State of Oklahoma with post office address at Hobart therein.

Affiant states that he has personal knowledge of business having been transacted by the above named defend-

ant at Hobart, Kiowa County, Oklahoma, in the year 1921 as follows, to-wit:

That Geo. A. Peterson in the month of June, 1921, had in his possession a catalogue of the Geo. O. Richardson Machinery Company of St. Joseph, Missouri, showing threshing machinery and road machinery with engines and offered to sell to affiant two Russell separators, one of which was shipped from Vinita, Oklahoma to Hobart, Oklahoma consigned to said affiant, the other machine was shipped from Wichita, Kansas to Hobart, Oklahoma in a car billed to Geo. Peterson; that Lew Herring of Thomas, Oklahoma who represented himself the traveling salesman of the said Geo. O. Richardson Machinery Company in Oklahoma took your order and completed a contract between the affiant and the said Geo. O. Richardson Machinery Company; that said machines were bought by affiant through the said Geo. A. Peterson and Lew Herring; that affiant paid for said machine by executing promissory notes to the said Geo. O. Richardson Machinery Company and that one of said notes is now in the Home State Bank of Hobart, Oklahoma for collection. This note is due December 1, 1921.

(Signed) JAMES H. KIMBALL.

Subscribed and sworn to before me this 12th day of November, 1921.

(Signed) HARRY L. BRETCH,
(Seal) Notary Public.

My Commisson expires Sept. 25, 1922.

BY MR. MOORE: I offer in evidence, the affidavit of W. R. Kirk.

NOTE BY REPORTER: At this point, Mr. Moore reads to the court, the affidavit of W. R. Kirk being Exhibit "7". Said Exhibit "7" having been offered on behalf of the plaintiff and having been received in evidence by the court,

without objections on behalf of the defendant; a full, true and correct copy of said Exhibit "7" being in words and figures as follows, to-wit:

"M. E. Fullenwider
Exhibit 7
Official Reporter

AFFIDAVIT.

State of Oklahoma, Muskogee County, ss.

I, W. R. Kirk, after first being duly sworn on my oath, according to law, depose and say:

That I am a resident and householder of said county and state and am 31 years of age; and

That I am and have been continuously since the 4th day of January, 1919, a duly appointed deputy Sheriff in and for said County and State; and

That on or about the 1st of July, 1921, there was assigned to me for execution and return by the Sheriff of said County and State, a Foreign Execution issued out of the District Court of Oklahoma County, Oklahoma, duly directed to the Sheriff of Muskogee County, in the case of John A. Scott, plaintiff vs. Geo. O. Richardson Machinery Co., No. 29106; and

That by virtue of such execution I did on or about the 1st of July, 1921, levy said writ on the following goods, to-wit:

2 Threshing Engines and 6 Russell Threshing Separators, which said property was found in said County of Muskogee, then in the custody of Harris Smith Mchy Co., who advised me that said goods and chattels had been consigned to them by the said Geo. O. Richardson Machinery Co., a corporation and further advised me that I should communicate with said corporation at St. Joe., Mo., and

That said Harris-Smith Mch Co., were not the owner

of said goods and chattels; but that they sold the products of said Geo. O. Richardson Machinery Co., from time to time receiving such goods on consignment.

Further affiant saith not.

(Signed) W. R. KIRK.

Subscribed and sworn to before me this 4th day of Nov. 1921.

(Signed) H. E. SULLIVAN,
Notary Public.

(Seal)

My commission expires 9-18-1923.

BY MR. MOORE: The plaintiff offers in evidence the affidavit of G. E. Blackstone.

NOTE BY REPORTER: At this point, Mr. Moore reads to the Court, the affidavit of G. E. Blackstone, being Exhibit "8". Said Exhibit "8" having been offered in evidence on behalf of the plaintiff and having been received in evidence by the Court without objections on behalf of the defendant; a full, true and correct copy of said Exhibit "8" being in words and figures as follows, to-wit:

"M. E. Fullenwider
Exhibit 8
Official Reporter

In the District Court of the United States for the Western District of Oklahoma.

Hon. John H. Cotteral, Judge.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a corporation, Defendant. No. —.

AFFIDAVIT.

State of Oklahoma, Muskogee County, ss.

G. E. Blackstone of lawful age being first duly sworn, deposes and says:

That affiant resides in Muskogee County, Oklahoma,

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with post office address therein as follows: Webbers Falls, Okla; that affiant is also one of the mortgagors in that certain chattel mortgage dated the 7th day of December, 1920, to the Geo. O. Richardson Machinery Company, a corporation, and which was filed in the office of County Clerk of said Muskogee County, Oklahoma, on the — day of ———, 1920, and numbered in the office of said County Clerk as 141490; that the notes described in said mortgage were given in purchase of certain machinery described in said chattel mortgage, purchased by this affiant and M. R. McGahey from the Mortgagee, the Geo. O. Richardson Machinery Company; that this affiant's order for said machine was solicited by, taken and filled by E. A. Harris and R. N. Smith implement dealers at the city of Muskogee at the time, or within a few days preceding the date of said chattel mortgage, who had said machinery in possession at Muskogee at the time the said order was taken, and who delivered the same to this affiant when the notes and mortgage securing the same were executed and delivered.

(Signed) G. E. BLACKSTONE.

Subscribed and sworn to before me this 15th day of Nov. 1921.

(Signed) JOE SHEFFELD,
(Seal) Notary Public.

My commission expires 3-1-24."

BY MR. MOORE: I have got a series of those affidavits; they are all practically the same form as to detail; I simply show that the machinery was on hand.

BY COURT: Just let them be introduced without being read.

NOTE BY REPORTER: At this point, Mr. Moore produces the affidavit of Wm. Kirksey, which is marked and identified as Exhibit "9". Said Exhibit "9" being offered

in evidence on behalf of the plaintiff and having been received in evidence by the Court without objections on behalf of the defendant; a full, true and correct copy of said Exhibit "9", being in words and figures as follows, to-wit:

"M. E. Fullenwider
Exhibit 9
Official Reporter

In the District Court of the United States for the Western District of Oklahoma.

Hon. John H. Cotteral, Judge.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a corporation, Defendant. No. —.

AFFIDAVIT.

State of Oklahoma, Muskogee County, ss.

William Kirksey of lawful age being first duly sworn deposes and says:

That affiant resides in Muskogee County, Oklahoma, with post office address therein as follows: Muskogee, Okla.; that affiant is also mortgagor in that certain chattel mortgage dated the 29th day of May, 1920, to the Geo. O. Richardson Machinery Company, a corporation, and which was filed in the office of County Clerk of said Muskogee County, Oklahoma, on the — day of ————, 1920, and numbered in the office of said County Clerk as 13598[illegible]; that the notes described in said mortgage were given in purchase of certain machinery described in said chattel mortgage, purchased by this affiant from the mortgagee, the Geo. O. Richardson Machinery Company; that this affiant's order for said machine was solicited by, taken and filled by E. A. Harris and R. N. Smith, implement dealers at the city of Muskogee at the time, or within a few days preceding the date of said chattel mortgage, who had said machinery in possession at Muskogee at the time

said order was taken, and who delivered the same to this affiant when the notes and mortgage securing the same were executed and delivered.

(Signed) WM. KIRKSY.

Subscribed and sworn to before me on this 12th day of Nov., 1921. (Signed) W. R. KIRK,
(Seal) Notary Public.

My Commission expires 5-28-25.

The above notes was given but was paid the same fall following. (Signed) WM. KIRKSY.

BY MR. MOORE: Now, here is a letter from the defendant company addressed to the plaintiff Scott, dated October 25, 1920. Plaintiff offers in evidence.

NOTE BY REPORTER: At this point Mr. Moore produces a letter which is marked and identified as Exhibit "10". Said Exhibit "10" having been offered in evidence on behalf of the plaintiff and having been received in evidence by the Court, without objections on behalf of the defendant; a full, true and correct copy of said Exhibit "10" being in words and figures as follows, to wit:

"M. E. Fullenwider
Exhibit 10
Official Reporter

GEO. O. RICHARDSON MACHINERY COMPANY
Incorporated
Russell Machinery
Corner Fifth and Olive Streets
St. Joseph, Missouri

October 25, 1920 C-Wic
Mr. John A. Scott, JRM-W C-Mass
600 East Elder Street,
Oklahoma City, Okla.

Dear Sir:

Your valued favor of the 21st inst., and we note that

these proposed bills will not be submitted until January 10th and therefore copy of same are not available before that time unless by special arrangement with some one who is presenting same; we may have an opportunity to see them before they are presented to the Legislature.

It is needless to remind you with your experience in legislation that the farmers of Oklahoma may defeat their very purpose by attempting too drastic legislation, as either the bill will be held unconstitutional and void, or if enforced, will have the effect of driving all of the companies out of the State and make it impossible for the farmers and threshing machine men to get either machinery or supplies.

A provision that there shall be one place in each County where repairs are kept would mean such an enormous addition to the overhead expense of each of the companies operating that we venture to say it would be necessary to increase the price of machinery to Oklahoma customers at least 25% over the price sold elsewhere.

The thresherman or farmer who may have had to wait a week or ten days or maybe two weeks for repair parts may think it a fine bit of legislation, but if he will just stop to think before he requires machinery company to carry a stock of repairs in his county seat, he will realize that in order for it to be possible for them to do business on that basis, it will be necessary to charge him sufficient price to pay for that stock of repairs whether he uses them or not. In nine cases out of ten if he would use a little foresight and order part before it breaks, when it first shows signs of wear, he would not be subjected to any delay whatever.

Again thanking you for your courtesy in this matter,

and feeling sure that you will appreciate the reasonableness of the statements made above, we are,

Yours very truly,

GEO. O. RICHARDSON
MACHINERY CO.

Dict by
Jno. R. Myers.

By MR. MOORE: I offer all these in evidence.

NOTE BY REPORTER: At this point Mr. Moore produces and hands to the Reporter for marking and identification five instruments, which are marked respectively Exhibit "11", Exhibit "12", Exhibit "13", Exhibit "14" and Exhibit "15". Exhibit "11" having been offered in evidence on behalf of the plaintiff and having been received in evidence by the Court, without objections on behalf of the defendant; a full, true and correct copy of said Exhibit "11" being in words and figures as follows, to wit:

"M. E. Fullenwider
Exhibit 11
Official Reporter

(The following letter goes to each manufacturer whose name appears on the attached list.)

April Fifth
Nineteen Twenty

Advance-Rumely Co.,
LaPorte, Indiana. Attention Mr. Mount.

Dear Mr. Mount:

We have just had a letter from John A. Scott, President of The Oklahoma Threshermen's Association, calling our attention to an effort being put forth in that State to change the method of computing the license fee for tractors from computing it on the draw bar pull basis to the belt

pull basis, and at such a rate that the license fee will be greatly increased.

Mr. Scott also calls our attention to several other items wherein the threshermen and tractor owners seem to be about to "get it in the neck" in Oklahoma. We are not entirely familiar with the situation in that State, but Mr. Scott has submitted such an array of evidence to us that there is a disposition to impose upon the threshermen and tractor owners in that State, that we cannot believe but that the situation is serious there.

If there are any others in that State other than Mr. Scott who are endeavoring to lead the fight in the threshermen's battles, we have never heard of them. Mr. Scott feels quite certain that if The Oklahoma Theshermen's Association can be built to the strength it should be, and if he could have the support of a larger proportion of them, that these adverse measures could and would be prevented, and he is asking an united front on the part of manufacturers to the end that the Oklahoma Association may become powerful enough to combat the tendencies that seem to exist there.

That something should be done down there to relieve the threshermen and tractor owners of hardships imposed and about to be imposed upon them seems quite evident, and we are writing you, asking your support for the Oklahoma Threshermen's Association plans for combating these oppressions, if their action coincides with your views; if it does not, we would be pleased to have a letter from you telling us how in your opinion this work can and will be best accomplished.

Thanking you for any suggestions and assistance you may be able to extend along the line of betterment of conditions for the Oklahoma boys, we are,

Yours very truly,

NATIONAL ASSOCIATION OF BROTHERHOODS OF THRESHERMEN.

WHN G

W. H. NEWSOM, Pres.

(The following names and addresses appear on a sheet attached to the foregoing letter:)

J. I. Case Thr. Mch. Co., attention Mr. Coleman, Racine, Wis.

Advance-Rumely Co., attention Mr. Mount, LaPorte, Ind.

Avery Company, attention Mr. Bartholomew, Peoria, Ill.

Huber Mfg. Co., attention Mr. E. C. L. Barlow, Marion, O.

The Russell & Co., attention Mr. Merwin, Massillon, O.

Geo. O. Richardson Mchy. Co., attention Mr. Myers, St. Joseph, Mo.

Nichols & Shepard Co., attention Mr. Bathrick, Battle Creek, Mich.

The Banting Mfg. Co., attention Mr. Kiracofe, Toledo, O.

Frick Company, attention Mr. Snively, Waynesboro, Pa.

Emerson-Brantingham Co., Rockford, Ill.

The A. D. Baker Co., Swanton, O.

Aultman & Taylor Co., Mansfield, O.

The Cape Mfg. Co., Cape Girardeau, Mo.

Minneapolis Thr. Mch. Co., Hopkins, Miss.

Wood Bros. Thresher Co., Des Moines, Iowa.

Port Huron Engine and Thresher Co., Port Huron, Mich.

Birdsell Mfg. Co., South Bend, Indiana.

International Harvester Co., Chicago, Ill.

Illinois Thresher Co., Sycamore, Ill.

Holt Mfg. Co., Peoria, Ill.

Twin City Co., Minneapolis, Minn.

Keck-Gonnerman Co., Mt. Vernon, Ind.

A. B. Farquhar Co., York, Pa.

Link Mfg. Co., attention Mr. H. C. Wallace, Kansas City, Mo.

Garden City Feeder Co., Pella, Iowa.
Wallace Mfg. Co., Kansas City, Mo.

NOTE BY REPORTER: Exhibit "12", having been offered in evidence on behalf of the plaintiff and having been received in evidence by the Court, without objections on behalf of the Defendant; a full, true and correct copy of said Exhibit "12" being in words and figures as follows, to wit:

"M. E. Fullenwider
Exhibit 12
Official Reporter

GEO. O. RICHARDSON MACHINERY COMPANY
Incorporated
Russell Machinery
Corner Fifth and Olive Street
Saint Joseph, Missouri

May 26, 1921.

Mr. John A. Scott,
600 East Elder Street,
Oklahoma City, Okla.

JRM:S

Dear Sir:—

I thank you very much for the copy of the little booklet covering laws pertaining to Oklahoma Threshermen. This no doubt is of great value to Oklahoma Threshermen and enables them to know exactly what their rights are and what laws govern them.

I am sure that other State Threshermen's Associattions will do well to follow your example and give their members the benefit of similar service.

Yours very truly,

Dict by JNO. R. MYERS.

NOTE BY REPORTER: Exhibit "13" having been offered

in evidence on behalf of the plaintiff and having been received in evidence by the Court, without objections on behalf of the defendant; a full, true and correct copy of said Exhibit "13" being in words and figures as follows, to wit:

"M. E. Fullenwider
Exhibit 13
Official Reporter

GEO. O. RICHARDSON MACHINERY COMPANY
Incorporated
Russell Threshing Machinery
Corner Fifth and Olive Street

Saint Joseph, Missouri, March 13, 1915.

905

Mr. John A. Scott,
No. 600 Elder Street,
Oklahoma City, Okla.

Dear Sir:

Our attention has been called to a bill introduced in the Oklahoma Legislature as follows:

State of Oklahoma, regular session of 1915 "An Act" making it a misdemeanor for any person, firm or corporation to sell separate parts of plows, binders, mowers, rakes, buggies and automobiles or any other farm machinery or vehicles for more than twenty (20%) above the actual price charged for such parts as sold in the complete machine or vehicle, and declaring an emergency.

Be It Enacted By the People of the State of Oklahoma:

Sec. 1. Any person, firm or corporation who shall sell separate parts of plows, binders, mowers, rakes, buggies and automobiles, or any other farm machinery or vehicles for more than twenty (20%) per cent above the actual price charged for such parts as sold in the complete machine or vehicles, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less

than five ($5.00) Dollars, nor more than Fifty ($50.00) Dollars for each and every offense.

Sec. 2. An emergency is hereby declared to exist by reason whereof it is necessary for the preservation of the public health and safety that this act take effect and "be in force from and after is passage and approval."

This bill, if enacted into a law and enforced, will cause the withdrawal from Oklahoma of all threshing machine companies, or it will mean that the prices of such machinery in Oklahoma will be more than doubled in order to enable the company selling such machinery to supply its customers with small parts without loss, as any sane, sound thinking reasonable man must know that where a repair part is sold single, it cannot be sold at only a 20% advance over its proportionate part of the cost of a completed machine, where the machine consists of a number of parts. Of course, with a plow that only has a few pieces, it would be an easy matter to regulate the price so that the completed plow would not sell for less than 85% of the sum of the individual parts.

There is another point that any reasonable man must take into consideration and that is that in order to handle the repair business for as a complicated machine as an engine and thresher, it is necessary for us to carry a good many thousand dollars worth of parts, for which we may or may not have a call, whereas, in selling an assembled complete machine there is not this waste. You know, and any reasonable man should know that the ultimate consumer necessarily bears the burden of an oppressive legislation, and if the Oklahoma Legislature enacts bills of this kind, the several companies effected by this legislation must either charge their Oklahoma customers greater prices in order to compensate them for this oppression or the business becomes unprofitable, and they will each and every one withdraw from the State and you can appreciate the fact that if the several companies are unable to do business in the State of Oklahoma, the farmer's wheat crop would be valueless, because they could not get it threshed as no new machines would come in and supplies could not be furnished to those already in the field.

You have a wide acquaintance with the several members of the Oklahoma Legislature and we will appreciate it very much if you will talk this matter over with them and explain to them that it would be injurious—first of all, to the Oklahoma farmer, because it will interfere with his purchase of machinery for the cultivation of his ground for the harvesting of his crops and for the threshing of his grain. It will interfere with the dealer, because in order to protect himself he would have to be an expert mathmetician and before he dared sell a small part he would have to figure up the cost of the completed machine, the cost of the small part and be able to prove that it complied with the law. It would interfere with the manufacturer least of all, because all he would have to do would be to simply raise the prices on his Oklahoma customers on his completed machine to the point where he would have a safe margin on maintaining the present price of repairs and instead of an engine costing $2000.00, as at present, it would be sold for not less than $4000.00 or $5000.00, or else the consumer would have to go out of the State to purchase his machine and then would be up against it for the purchase of supply parts.

JRM W

C/Wic

C/Mass

Yours very truly,

GEO. O. RICHARDSON MACHINERY CO.

Jno. R. Myers

NOTE BY REPORTER: Exhibit 14 having been offered in evidence on behalf of the plaintiff and having been received in evidence by the Court, without objections on behalf of the defendant, a full, true and correct copy of said Exhibit "14" being in words and figures as follows, to wit:

"M. E. Fullenwider
Exhibit 14
Official Reporter

GEO. O. RICHARDSON MACHINERY COMPANY
Incorporated
Russell Threshing Machinery
Corner Fifth and Olive Street

Saint Joseph, Missouri, April 8, 1920.

JRM-W C/Wic

Mr. W. H. Newsom, President,
National Association of Brotherhoods of Thresherman,
Elizabethtown, Ind.

Dear Sir:

In response to yours of the 5th inst., we beg to say that it has been the policy of this company to always encourage the effort of the Threshermen Associations in the several states to benefit the industry. The writer is personally acquainted with Mr. Scott and knows him to be an exceedingly able man with a large experience in a political way and he undoubtedly can be of benefit to the Oklahoma Association.

It has always been our policy to urge our customers to affiliate themselves with these Associations and to work together in harmony for results to be accomplished.

We are writing our Wichita Office, which is in immediate charge of the territory, including Oklahoma, and if we can be of any assistance, we will gladly do our part.

Yours very truly,

GEO. O. RICHARDSON
MACHINERY CO.
Jno. R. Myers

Dict by

NOTE BY REPORTER: Exhibit "15" having been offered

in evidence on behalf of the plaintiff and having been received in evidence by the Court, without objections on behalf of the defendant; a full, true and correct copy of said Exhibit 15, being in words and figures as follows, to-wit:

"M. E. Fullenwider
Exhibit "15"
Official Reporter

Geo. O. Richardson Machinery Company
Incorporated
Russell Machinery
Corner Fifth & Olive Street,
Saint Joseph, Missouri

September 15, 1920

JRM-W C/WIC

Oklahoma Threshermens Association,
Oklahoma City, Okla.
Mr. John A. Scott, President.

Gentlemen;

In response to your circular letter, we beg to say that we will subscribe for one half page in your Convention program. It is our understanding that you will send out 5000 copies or more. Price of half page $20.00.

You do not state when advertising copy will be required, and we therefore ask you to advise us as fully as possible that we may prepare copy. It may be possible that we will increase our subscription to one page at $35.00, but this will depend upon our advertising plans for 1921, which are not yet completed.

Yours very truly,

GEO. O RICHARDSON
MACHINERY CO.

Dict by
Jno R. Myers.

BY MR. MOORE: That's all of our evidence.

BY COURT: As I understand, the letters are introduced?

BY MR. MOORE: Yes, sir.

BY MR. PINSON: They are in evidence.

BY COURT: Is that all the evidence, gentlemen?

BY MR. PINSON: That's all, Your Honor.

BY COURT: All right.

BY MR. EVEREST: There is one thing I want to get in the record and that is, the findings of Judge Cotteral, a certified copy, we will offer in evidence there.

BY MR. PINSON: We object to this being offered in evidence, not because we want to be contentious, but because we would like to preserve the record, because the effect of it is, as I understand it, the offer will make the matter *res adjudicata* and for that reason we wish to object to the offer.

BY MR. EVEREST: We want to offer the petition, the judgment and the order of remanding for the purpose of showing the court that they are before the court.

BY COURT: Let them be introduced and the objection overruled and an exception allowed.

BY MR. PINSON: Exception.

NOTE BY REPORTER: Special appearance and motion to quash service and vacate judgment filed on July 14th, 1921, being offered in evidence at this time on behalf of the plaintiff and having been received in evidence by the Court, over the objections and exceptions of the defendant; a full, true and correct copy of said instrument being in words and figures as follows, to wit:

BY MR. PINSON: The defendant excepts.

BY MR. PINSON: Now, the defendant, Your Honor, please, by a special arrangement with counsel who have been very courteous uniformly to me in this matter, desires to file a petition to vacate judgment under the provisions of our statute under a petition to vacate judgment; we may have the petition filed; counsel, as I understand, will waive service of summons.

BY MR. MOORE: We will waive the service of summons but we want time to plead to it. We will enter an appearance.

BY MR. PINSON: Now, if the record will show that the petition to vacate the judgment is filed by the defendant; that issuance of summons is waived by the plaintiff and plaintiff prays and asks twenty (20) days to plead to the petition.

BY COURT: And twenty (20) days is given plaintiff to plead to the petition.

BY MR. MOORE: That's all right.

BY MR. PINSON: The petition filed, service of summons waived by plaintiff and the plaintiff asks twenty (20) days to plead to the petition. By agreement, the testimony of John R. Myers, in support of petition, is taken for preservation as evidence on the petition.

NOTE BY REPORTER: At this time Mr. John R. Myers is called, sworn and his testimony taken for future use and reference.

NOTE BY REPORTER: Said petition to vacate judgment, being tendered in Court and filed by the Court Clerk; a full, true and correct copy of the same, being in words and figures as follows, to wit:

EVIDENCE CLOSED.

State of Oklahoma, Oklahoma County, ss.

I, M. E. FULLENWIDER, one of the Official Reporters of the District Court of the Thirteenth Judicial District of the State of Oklahoma, and being the Official Reporter to Honorable James I. Phelps, the trial judge of this cause, do hereby certify that the above and foregoing is a full, true, correct and complete transcript of all my shorthand

notes of all the evidence introduced or offered upon the trial of the above entitled cause, as well as all objections of counsel thereto, the rulings and remarks of the court thereon and the exceptions taken thereto; and is in all respects a full, true, correct and complete transcript of the proceedings had upon the trial of the above entitled cause.

Witness my hand this 25th day of November, 1922.

(Signed) M. E. FULLENWIDER,
Official Reporter.

AND THEREAFTER: On the 1st day of June, 1922, there was entered in said cause and recorded by the Court Clerk of said Court on the Minutes of said Court a certain order as to proceedings had therein; a full, true and correct copy of said Minutes, together with that part pertaining to this case, is in words and figures as follows, to wit:

JAMES I. PHELPS, *Judge*.

June 1st, 1922.

Be It Remembered: That on the 1st day of June, 1922, same being a regular day of the May, 1922, term of the District Court of Oklahoma County, Oklahoma, court convened pursuant to adjournment with the following officers present: James I. Phelps, Judge; Cliff Myers, Court Clerk; Wm. D. Thompson, Deputy; Forrest L. Hughes, County Attorney; Ben B. Dancy, Sheriff; M. E. Fullenwider, Official Stenographer; W. F. Jones, Bailiff. Public proclamation of the opening of this court having been duly ordered, the following proceedings were had:

• • • • • • • • • • •

Scott vs. Richardson, 29,106.

At this time this case was called and comes on for hearing on motion of defendant to set aside judgment and motion to quash; motion to quash overruled. Exceptions allowed. Leave granted defendant to file petition to vacate judgment. Summons waived by plaintiff and plaintiff en-

ters appearance and asks 20 days to answer and leave is granted by agreement. Testimony of John R. Myers in support of petition is taken for preservation.

• • • • • • • • • •

At this time this Court adjourned until June 2nd, 1922."

AND THEREAFTER: On the 7th day of June, 1922, there was filed in said cause by the Court Clerk of said Court plaintiff's demurrer to defendant's petition to set aside judgment; a full, true and correct copy of the same, together with all endorsements thereon, is in words and figures as follows, to wit:

"In the District Court of Oklahoma County, in the State of Oklahoma.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a corporation, Defendant. No. 29,106.

DEMURRER TO DEFENDANT'S PETITION TO VACATE JUDGMENT.

Comes now plaintiff and demurs to the defendant's petition filed herein on June 1st, 1922, to set aside and vacate the judgment rendered on October 23rd, 1920, for the reasons following—that is to say:

First. That the said petition does not state facts sufficient to constitute a cause of action, or to entitle defendant to the relief prayed, or to any relief from the operation of the said judgment.

Second. That the said petition affirmatively shows that the defendant is a foreign corporation, and as such has failed, neglected and refused to meet the mandatory requirements of the statutes of the State of Oklahoma, in such cases made and provided, as conditions precedent to a justifiable right under its said petition.

Third. That the said petition affirmatively shows that the defendant corporation is without legal capacity

to maintain in the State courts of Oklahoma any action or legal proceeding for affirmative relief, based on alleged corporate rights.

(Signed) EVEREST, VAUGHT & BREWER,
and CHAS. L. MOORE,
Attorneys for Plaintiff.

(Endorsed on the back thereof as follows:) No. 29,-106. District Court Oklahoma County, State of Oklahoma. John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a corporation, Defendant. Plaintiff's demurrer to defendant's petition to set aside judgment. Filed in District Court, Oklahoma County, Oklahoma, Jun 7 1922 Cliff Myers, Court Clerk, by Fritz Blumenthal, Deput. Everest, Vaught & Brewer, and Chas. L. Moore, Attorneys for Plaintiff."

AND THEREAFTER: On the 9th day of June, 1922, there was filed in said cause, by the Court Clerk of said Court, a Journal Entry; a full, true and correct copy of the same, together with all endorsements thereon, is in words and figures as follows, to wit:

"In the District Court of Oklahoma County,
In the State of Oklahoma.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Co., a corporation, Defendant. No. 29,106.

JOURNAL ENTRY.

Now on this, the first day of June, 1922, the same being a regular judicial day of this court, this cause came on for hearing upon the special appearance of the defendant in the presentation of its application to quash the service of summons and to vacate the judgment herein, the parties appeared by their respective counsel, and evidence was taken in support of and in oposition to the said application and the matter argued at length, and the court being fully advised in the premises doth find the issue in

favor of the plaintiff and hereby overrules the said application, to which action of the court the defendant excepted.

Thereupon, the defendant asked and was granted leave to file instanter its petition to vacate the said judgment, which was filed accordingly, and the plaintiff in open court waived the issuance and service of summons and asked and is now granted twenty days from this date to plead to the said petition to vacate judgment.

(Signed) JAMES I. PHELPS,
Judge.

(Endorsed on back thereof as follows:)

Filed in District Court, Oklahoma County, Oklahoma, Jun 9, 1922. Cliff Myers, Court Clerk, by Carl Traub, Deputy."

AND THEREAFTER: On the 13th day of June, 1922, there was entered in said cause and recorded by the Court Clerk of said Court, on the Minutes of said Court, a certain Order as to proceedings had therein; a full, true and correct copy of said Minutes, together with that part pertaining to this case, is in words and figures as follows, to wit:

JAMES I. PHELPS, *Judge*.

June 13th, 1922.

Be It Remembered: That on the 13th day of June, 1922, same being a regular day of the May 1922 term of the District Court of Oklahoma County, Oklahoma, court convened pursuant to adjournment with the following officers present: James I. Phelps, Judge; Cliff Myers, Court Clerk; Wm. D. Thompson, Deputy; Forrest L. Hughes, County Attorney; Ben B. Dancy, Sheriff; M. E. Fullenwider, Official Stenographer; W. F. Jones, Bailiff.

Public proclamation of the opening of this Court having been duly ordered, the following proceedings were had:

Scott vs. Richardson Machinery Co. 29106.

At this time, this case was called and demurrer to plaintiff's petition to vacate judgment sustained; exceptions allowed. Defendant elects to stand on petition to vacate judgment; petition denied and defendant excepts. Defendant Geo. Richardson Machinery Co. gives notice in open court of intention to appeal and requests that pending the appeal execution be stayed upon giving sufficient bond. Bond fixed at $9,000, to be given in 15 days from this date; 60-10-5 days to make and serve case-made, all as per J. E.

* * * * * * * * * * *

At this time, this Court adjourned until June 14th, 1922."

AND THEREAFTER: On the 16th day of June, 1922, there was filed in said cause, by the Court Clerk of said Court, a Journal Entry of Judgment; a full, true and correct copy of the same, together with all endorsements thereon, is in words and figures as follows, to wit:

"In the District Court of Oklahoma County,
State of Oklahoma.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Co., a corporation, Defendant. No. 29,106.

JOURNAL ENTRY OF JUDGMENT.

On this 13th day of June, 1922, came on regularly to be heard the demurrer of the plaintiff John A. Scott to the petition of the defendant Geo. O. Richardson Machinery Company, to vacate judgment and to be permitted to file answer herein. And the court, having heard the argument of counsel and having considered the said pleadings and being well and sufficiently advised in the premises, is

of the opinion that said demurrer should be sustained, and it is so ordered; to which action of the court the defendant, Geo. O. Richardson Machinery Company, in open court, excepts.

Whereupon, the defendant refuses to plead further; and thereupon,

It is by the court considered, ordered, adjudged and decreed that the petition of the defendant Geo. O. Richardson Machinery Company, to vacate judgment herein be and the same is hereby dismissed at defendant's costs; to which action of the court the defendant, Geo. O. Richardson Machinery Company, in open court excepts, and thereupon gives notice in open court of its intention to appeal to the Supreme Court of the State of Oklahoma from the judgment of the trial court, and a minute of such notice and intention was thereupon duly entered by the clerk, as provided by law.

It is further by the court considered, ordered and adjudged that the levy of any impending execution in this cause be retained pending the giving and approval of the bond hereinafter provided for; that upon approval of such bond, execution shall stand recalled and the judgment herein be stayed thereafter pending appeal upon the filing and approval within fifteen days from this date of an undertaking to the said plaintiff in the sum of nine thousand dollars, with good and sufficient surety or sureties.

It is further ordered by the court, for good cause shown, that the said defendant is hereby granted sixty days from this date to prepare and serve case-made in this cause; the plaintiff to have ten days thereafter for suggestion of amendments, and the case made to be settled upon five days' notice by either party.

(Signed) JAMES I. PHELPS,
Judge.

(Endorsed on the back thereof as follows:)
Filed in District Court, Oklahoma County, Oklahoma.

Jun 16, 1922. Cliff Myers, Court Clerk, by Fritz Blumenthal, Deputy."

AND THEREAFTER: On the 19th day of June, 1922, there was filed in said cause, by the Court Clerk of said Court, a Supersedeas Bond; a full, true and correct copy of the same, together with all endorsements thereon, is in words and figures as follows, to wit:

"We Will Bond You

UNITED STATES FIDELITY & GUARANTY COMPANY
Contract, Fidelity, Judicial, Casualty
Baltimore, Maryland

No. --------- $---------

In the District Court of Oklahoma County, State of Oklahoma.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Co., Defendant. No. 29106.

SUPERSEDEAS.

Know All Men By These Presents:

That we, Geo. O. Richardson Machinery Company, as Principal, and United States Fidelity and Guaranty Company, as Surety, are held and firmly bound unto John A. Scott in the sum of Nine Thousand & No/100 Dollars ($9,000.00), to be paid to the said John A. Scott, the plaintiff above named, for the payment of which well and truly to be made we hereby bind ourselves, our successors and assigns, jointly and severally, by these presents.

Whereas, on June 13, 1922, the District Court of Oklahoma County entered its final order dismissing the petition of Geo. O. Richardson Machinery Company, defendant, to vacate judgment rendered in said Court in favor of John A. Scott, plaintiff, and against the said Geo. O. Richardson Machinery Company, defendant, on, to wit:

The 23rd day of October, 1920, for the sum of $3,945.45; and

Whereas, the said defendant, Geo. O. Richardson Machinery Company, intends to appeal from the said order of the said District Court; and whereas the said District Court on said day and date fixed supersedeas bond in the sum of $9,000.00 and directed that execution be not issued for fifteen days from the said 13th day of June, and that execution be stayed thereafter pending appeal, if within said fifteen days the defendant should enter into an undertaking to the plaintiff in the sum of $9,000.00, with sureties to be approved by the Clerk of said Court, conditioned that it would pay said judgment, together with interest and costs, if the same should be finally adjudicated against it.

Now, therefore, the conditions of this obligation are such that, if the said defendant shall be finally adjudged to pay the amount of said judgment, interest and costs and shall pay the same, then this obligation shall be void; or, if the said defendant shall obtain final judgment in its favor, then this obligation shall be void; otherwise to remain in full force and effect.

Witness our execution hereof this 15th day of June, 1922.

(Signed) GEO. O. RICHARDSON MACHINERY CO.
By Linebaugh & Pinson, Attorneys.

UNITED STATES FIDELITY AND GUARANTY COMPANY.
(Signed) By Ancel Earp,
(Seal) Its Attorney in Fact.

Approved this 19 day of June, 1922. (Signed) Cliff Myers, Court Clerk, by Fritz Blumenthal, Deputy. (Seal)

29106. From Geo. O. Richardson Machinery Company to John A. Scott. Supersedeas Bond. We will bond

you—Contract, Fidelity, Judicial, Casualty. Filed in District Court, Oklahoma County, Oklahoma, Jun 19, 1922. Cliff Myers, Court Clerk, by Fritz Blumenthal, Deputy. United States Fidelity & Guaranty Company, Baltimore, Md. 7-443."

AND THEREAFTER: On the 11th day of August, 1922, there was filed in said cause, by the Court Clerk of said Court, an Extension of Time; a full, true and correct copy of the same, together with all endorsements thereon, is in words and figures as follows, to wit:

AND THEREAFTER: On the 28th day of September, 1922, there was filed in said cause, by the Court Clerk of said Court, Plaintiff's Suggestion of Amendment to Case-made; a full, true and correct copy of same, together with all endorsements thereon, is in words and figures as follows, to wit:

In the District Court of Oklahoma County,
State of Oklahoma.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a corporation, Defendant. No. 29,106.

PLAINTIFF'S SUGGESTION OF AMENDMENT TO CASE-MADE.

Comes now on this September 26, 1922, the plaintiff, John A. Scott, in suggestion of amendments to the case-made served by the defendant, Geo. O. Richardson Machinery Company, a corporation, on September 20, 1922, and requests the trial judge to cause and require the incorporation in said case-made as part thereof, of those parts of the record of said cause, numbered and specified as follows, that is to say:

First: The voluntary dismissal by plaintiff of his first cause of action.

Second: The Motion or Petition of defendant, filed in this court on July 14, 1921, and Notice of Presentment, seeking in effect: (a) To quash the service of summons; (b) To vacate the judgment; (c) To recall the execution, and (d) To secure leave for defendant to go hence without day.

Third: The petition of defendant filed concurrently in this cause with that above, praying for removal into the United States District Court for the Western District of Oklahoma, and defendant's bond accompanying same.

Fourth: The order of this Court, removing same into the said Federal Court.

Fifth: Plaintiff's motion in Federal Court to remand to State Court.

Sixth: Order of Federal Court recalling the execution from the State Court.

Seventh: Order of Federal Court remanding cause to State Court.

Eighth: All proceedings in the State Court, including the evidence, oral and documentary, in support of and opposition to, as to the hearing and determination of the defendant's motion described and specified in the above second suggestion.

Ninth: The order of this Court overruling and denying the defendant's motion or petition specified in the above second and eighth suggestions of amendment.

And the plaintiff submits and states that his said suggestions of amendment, numbered from one to nine above, inclusive, form component parts of the record in said cause, and are necessary to properly present to the Supreme Court on the attempted appeal of the defendant herein, the issue of facts found and questions of law decided by this court upon which the order now sought to be appealed from is predicated, the same showing an orderly,

legal, final, judicial finding and determination of the facts arising in the several stages of the trial, all based on sufficient competent evidence and remaining unappealed from, and now *res adjudicata*, which facts so found by the court and of record before it, the court had and took judicial notice in making and entering the judgment to be presented on appeal.

Respectfully submitted,

(Signed) CHAS. L. MOORE,
EVEREST, VAUGHT & BREWER,
of Counsel for Plaintiff.

(Endorsed on the back thereof as follows:)

No. 29,106. Okla. Co. District Court. John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Co., a corporation, Defendant. Plaintiff's Suggestion of Amendment to Case-Made. Copy mailed to Linebaugh & Pinson, Muskogee, Oklahoma, as Attorneys for Defendant, on Sept. 27th, 1922. Filed in District Court, Oklahoma County, Oklahoma, Sept. 28, 1922. Cliff Myers, Court Clerk, by Carl Traub, Deputy."

In the District Court of Oklahoma County,
State of Oklahoma.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Co., a corporation, Defendant. No. 29,106.

JOURNAL ENTRY.

Now, on this 10th day of November, 1922, this cause came on for Settlement of the Case Made tendered by the defendant, Geo. O. Richardson Machinery Company, a corporation, and the Suggestion of Amendments thereto by the plaintiff John A. Scott and the said defendant had filed with the Judge a written consent that the same might be taken up and considered on their written letter, expressing their views of the matter, and the Court being fully advised in the premises, finds that the Suggestion of

Amendments as offered by the plaintiff, John A. Scott, should be sustained and the case-made enlarged to include the amendments suggested by the plaintiff John A. Scott, which is hereby ordered.

(Signed) JAMES I. PHELPS,
District Judge.

(Endorsed on the back thereof as follows:)

No. 29,106. John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Co., Defendant. Journal Entry. Filed in District Court, Oklahoma County, Nov. 10, 1922. Cliff Myers, Court Clerk, ———, Deputy."

JAMES I. PHELPS, *Judge.*

November 10th, 1922.

Be It Remembered: That on the 10th day of November, 1922, same being a regular day of the September 1922 term of the District Court of Oklahoma County, Oklahoma, court convened pursuant to adjournment with the following officers present: James I. Phelps, Judge; Cliff Myers, Court Clerk; Wm. D. Thompson, Deputy; Forrest L. Hughes, County Attorney; Ben B. Dancy, Sheriff; M. E. Fullenwider, Official Stenographer; W. F. Jones, Bailiff. Public proclamation of the opening of this court having been duly ordered, the following proceedings were had:

* * * * * * * * *

John A. Scott vs. Richardson Machinery Co. No. 29,106.

At this time, this case was called and comes on for hearing on plaintiff's suggested amendments to case-made, same having been filed in writing with the court clerk of Oklahoma County, Oklahoma, and after due consideration of same by the court, said suggested amendments sustained by the court and case-made ordered completed in accordance therewith; therefore, on application

of defendant, it is granted the further period of ten days, in addition to time heretofore granted herein, within which to prepare and serve case-made herein, all as per J. E. herein.

. . . . . .

At this time, this Court adjourned until November 11th, 1922."

THE ABOVE AND FOREGOING CASE-MADE contains a full, true, correct and complete copy of all the pleadings, motions, orders and proceedings had, made and rendered in said cause, necessary for appeal herein, and also contains all of the evidence, both oral and documentary, introduced or offered on the trial of said cause, together with the objections of counsel thereto, the rulings and remarks of the Court thereon, and the exceptions taken thereto and is in all respects a full, true, correct and complete Case-Made.

In the District Court of Oklahoma County,
State of Oklahoma.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a corporation, Defendant. No. 29,106.

ACKNOWLEDGMENT OF SERVICE
OF CASE-MADE.

To John A. Scott, Plaintiff, and Messrs. J. H. Everest and C. L. Moore, His Attorneys of Record:

The above and foregoing Case-Made is tendered to and served upon you as a full, true, correct and complete Case-Made of the pleadings and judgment had, together with the evidence introduced in support thereof, in the above entitled cause and the record therein, necessary for appeal herein, upon which the said judgment was based.

(Signed) LINEBAUGH & PINSON,
Attorneys for Defendant.

We, J. H. Everest and C. L. Moore, attorneys of record for the above named plaintiff, do hereby accept and acknowledge due and legal service of the above and foregoing Case-Made in the above styled cause and acknowledge service of the same on this 20 day of Sept., 1922.

J. H. EVEREST,
C. L. MOORE,
By J. H. HALLEY,
Attorneys for Plaintiff.

In the District Court of Oklahoma County,
State of Oklahoma.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, Defendant. No. 29,106.

ACKNOWLEDGMENT OF SERVICE
OF CASE MADE.

To John A. Scott, Plaintiff, and Messrs. J. H. Everest and C. L. Moore, his Attorneys of Record:

The above and foregoing Case-made is tendered to and served upon you as a full, true, correct and complete Case-Made of the pleadings and judgment had, together with the evidence introduced in support thereof, in the above entitled cause and the record therein, necessary for appeal herein, upon which the said judgment was based

LINEBAUGH & PINSON,
Attorneys for Defendant.

We, J. H. Everest and C. L. Moore, attorneys of record for the above named plaintiff, do hereby accept and acknowledge due and legal service of the above and fore

going Case-Made in the above styled cause and acknowledge service of the same on this 25 day of November, 1922.

EVEREST, VAUGHT & BREWER
and CHAS. L. MOORE,
Attorneys for Plaintiff.

In the District Court of Oklahoma County,
State of Oklahoma.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a corporation, Defendant. No. 29,106.

STIPULATION OF ATTORNEYS.

It is Hereby Stipulated and Agreed: By and between the parties hereto: The plaintiff, John A. Scott, by and through Mr. Charles L. Moore and Messrs. Everest, Vaught & Brewer, all of Oklahoma City, Oklahoma, his attorneys of record, and the defendant, Geo. O. Richardson Machinery Company, a corporation, by and through Messrs. Linebaugh & Pinson, of Muskogee, Oklahoma, its attorneys of record:

That the foregoing Case-Made contains a full, true, correct and complete copy and transcript of all the proceedings in said cause, including all the pleadings filed and proceedings had, all the evidence offered or introduced, all the objections of counsel, all the orders and rulings made by the Court thereon, and all the exceptions taken and allowed by the Court, and all of the record upon which the judgment in said cause was made and entered; and the same is a full, true, correct and complete Case-Made; and the said plaintiff hereby waives the right to suggest amendments and hereby consents that the same may be settled immediately and without notice, and hereby joins in the request of the defendant that the Judge of said Court settle and sign the same and order the same certified by the Clerk of said Court, according to law, and by him filed.

Witness our Hands at Oklahoma City, Oklahoma County, State of Oklahoma, this 11th day of December, 1922.

LINEBAUGH & PINSON,
Attorneys for Defendant.

EVEREST, VAUGHT & BREWER and CHAS. L. MOORE,
Attorneys for Plaintiff.

State of Oklahoma, Oklahoma County, ss.

I, Cliff Myers, Court Clerk of the District Court of Oklahoma County, State of Oklahoma, do hereby certify that the foregoing is a full, true and correct transcript of the record in the above entitled cause.

In Witness Whereof, I have hereunto set my hand and the seal of said Court on this, the 11 day of December, 1922.

CLIFF MYERS,
Court Clerk of Oklahoma County,
State of Oklahoma.

WM. D. THOMPSON,
Deputy.

(Seal)

In the District Court of Oklahoma County,
State of Oklahoma.

John A. Scott, Plaintiff, vs. Geo. O. Richardson Machinery Company, a corporation, Defendant. No. 29,106.

CERTIFICATE OF TRIAL JUDGE.

State of Oklahoma, Oklahoma County, ss.

I, the undersigned, Judge of the District Court of Oklahoma County, State of Oklahoma, and within the Thirteenth Judicial District of the State of Oklahoma and

the Trial Judge of said above entitled cause, do hereby certify that the foregoing was presented to me as a Case-Made in the above entitled cause and due and legal service of this Case-Made having been made upon the attorneys of record for the above named plaintiff, as shown on page — of this Case-Made; and the attorneys for the plaintiff and the attorneys for the defendant having stipulated, as shown on page — and page — of this Case-Made that the above and foregoing is a full, true, correct and complete Case-Made and having waived the suggestion of amendments and stipulated that said Case-Made should be signed by me immediately, and without notice; the same being a full, true, correct and complete Case-Made, I now sign and settle the same as a full, true, correct and complete Case-Made; and direct that it be attested and filed by the Clerk of said Court, according to law.

And the said defendant, to wit: Geo. O. Richardson Machinery Company, a corporation, is granted permission to withdraw the same, after it is filed by the Clerk of said Court, and attested by him, for the purpose of attaching the same to its Petition in Error on appeal to the Supreme Court of the State of Oklahoma.

Witness my Hand, in Chambers, at Oklahoma City, Oklahoma County, State of Oklahoma, this 11th day of December, 1922.

JAMES I. PHELPS,
District Judge.

Attest:
CLIFF MYERS,
Court Clerk of Oklahoma County,
State of Oklahoma.
By WM. D. THOMPSON,
(Seal) Deputy.

Filed in District Court, Oklahoma County, Oklahoma, Dec. 11, 1922.

CLIFF MYERS,
Court Clerk.

By WM. D. THOMPSON,
Deputy.

THEREAFTER, at the October, 1924, term of said Supreme Court, on the fourteenth day of October, 1924, the following proceeding was had, to wit:

No. 14,004—Geo. O. Richardson M. Co. vs. J. A. Scott.

And now this cause comes on for final decision and determination by the court upon the record and briefs filed therein.

And the court having considered the same finds that the judgment of the trial court in the above cause should be reversed and the cause remanded.

It is therefore ordered and adjudged by the court that the judgment of the trial court in the above cause be, and the same is hereby, reversed and the cause remanded with directions to proceed consistent with the opinion filed therein.

Opinion by LYDICK, J.:

In the Supreme Court of the State of Oklahoma.

(Filed in Supreme Court of Oklahoma, Oct. 14, 1924, Wm. M. Franklin, Clerk.)

Geo. O. Richardson Machinery Company, a corporation, Plaintiff in Error, vs. John A. Scott, Defendant in Error.—No. 14,004.

Syllabus

In a case where the only service of process had upon a foreign corporation, as defendant, was the service of summons upon the Secretary of State, it was his implied duty to cause timely notice thereof to be given to such

foreign corporation, and where he failed to do so, and the foreign corporation acquired no actual knowledge of the pendency of the suit until personal judgment was rendered against it therein, such facts constitute an "unavoidable casualty or misfortune preventing the party * * * defending", as defined in Section 810, C. O. S. 1921, and the court will vacate such judgment when such foreign corporation proceeds in sufficient compliance with the applicable provisions of said statute.

Error from the District Court of Oklahoma County. Hon. James I. Phelps, Judge.

Reversed and remanded.

Linebaugh & Pinson, Muskogee, Okla., for Plaintiff in Error.

Everest, Vaught & Brewer, Chas. L. Moore, Oklahoma City, Okla., for Defendant in Error.

LYDICK, J.:

In the district court of Oklahoma County, John A. Scott, as plaintiff, brought this action against the Geo. O. Richardson Machinery Company, a foreign corporation, doing business in this state, as defendant, and which had no officer in the state and had not designated an agent in this state upon whom service of process might be made. Summons was served upon the Secretary of State, as authorized in such cases by Section 5436, C. O. S. 1921. The defendant made default in appearance and a personal judgment was rendered for plaintiff and against the defendant accordingly. Within the time and according to the provisions of Section 810, C. O. S. 1921, the defendant filed its petition to vacate such judgment, alleging under oath that the Secretary of State did not deliver to it the copy of summons served upon him and that it did not learn and had no practical means of learning of the pendency of such suit until after the judgment had been rendered. The petition recited facts which, if true, would show the

judgment grossly unjust and it was otherwise sufficient to meet the requirements of such statute. The facts stated clearly appear from the record. The district court overruled the motion and defendant appeals to this court.

In a case where the only service of process had upon a foreign corporation as defendant was the service of summons upon the Secretary of State, it was his implied duty to cause timely notice thereof to be given to such foreign corporation, and where he failed to do so and the foreign corporation acquired no actual knowledge of the pendency of the suit until personal judgment was rendered against it therein, such facts constitute an "unavoidable casualty or misfortune preventing the party * * * defending", as defined in Section 810, C. O. S. 1921. To permit such judgment to stand would contravene the basic principles of American jurisprudence and shock the very soul of justice.

The judgment is reversed and the cause remanded.

Concurring: McNeill, C. J., and Branson, Warren, Gordon, JJ.

THEREAFTER, at the October, 1925, term of said court, on the thirteenth day of October, 1925, the following proceeding was had in said cause, to wit:

No. 14,084—G. O. Richardson Machinery Co. vs. J. A. Scott.

And now on this day it is ordered by the court that the above cause be, and the same is hereby, revived in the name of Mrs. Annie Scott, as administratrix of the estate of John A. Scott, deceased, with will annexed.

(Filed in Supreme Court of Oklahoma, Oct. 28, 1925. Wm. M. Franklin, Clerk.)

In the Supreme Court of the State of Oklahoma.

Geo. O. Richardson Machinery Company, a corporation,

Plaintiff in Error, vs. Mrs. Annie Scott, Administratrix of the Estate of John A. Scott, deceased, with will annexed, Defendant in Error. No. 14,004.

PETITION FOR RE-HEARING.

Comes now Mrs. Annie Scott, administratrix of the estate of John A. Scott, deceased, with will annexed, defendant in error, herein, and respectfully represents to the court:

First: That on the 14th day of October, 1924, a decree and judgment was rendered by this Court in this cause, by which the order and judgment of the District Court of Oklahoma County appealed from was reversed and remanded, the record in said cause presenting to this court for consideration and review, a single question, viz.: The sufficiency of a petition filed in the said District Court on June 7th, 1922, by the plaintiff in error, to vacate the judgment of said court in said cause, entered on October 23, 1920, said trial court having, on demurrer thereto, held said petition insufficient, and upon refusal of said plaintiff in error to plead further, dismissed the same, from which action this appeal is prosecuted.

Second. That John A. Scott, the original defendant in error herein, departed this life on October 17th, 1924, without having filed a petition for re-hearing; that within 15 days after decision by this court for filing such petition for re-hearing, his death was suggested, and an order entered, staying mandate pending revivor; that on October 13, 1925, after due notice, this court by order entered of record, revived the original judgment, as also the cause of action herein, in the name of this petitioning defendant in error, and allowed her 15 days from the said date in which to file this, her petition for re-hearing.

Third: Defendant in error especially represents and shows to this court that there was error in its said decision of said October 14th, 1924, in this, to wit: (a) In holding that there was an implied duty laid by Section 5436, C. O. S., on the Secretary of State of the State of

Oklahoma, for him to cause timely notice of the service of summons upon him to have been given to said plaintiff in error; and (b), that his failure in such respect, coupled with the fact that said plaintiff in error (a foreign corporation, doing an intra-state business in Oklahoma without having appointed an agent for the service of process upon it in said State), had no actual knowledge of the pendency of the said suit until personal judgment had been rendered against it, together constitute an "unavoidable casualty, or misfortune, preventing the party * * * defending", as defined by Section 810, C. O. S. 1921.

Fourth. That said decision overlooked the fact that the "unavoidable casualty and misfortune" provided in the statute for vacation of judgments after the term at which the same were rendered, applies to cases only where some accidental injury or sickness, etc., has intervened to prevent a defense, and not to a want of knowledge of service of summons, and overlooked the further fact that the petition to vacate fails to allege facts sufficient to constitute "unavoidable casualty and misfortune" within the purview of said statute.

Fifth. That the decision aforesaid is in conflict with the provisions as a whole of Article X, Chapter 34, Compiled Oklahoma Statutes 1921, relating to "Foreign Corporations", and especially with running sections incorporated therein, viz: 5432, 5433, 5434, 5435, 5436, 5441, 5442, 5443, and 5444, in that it fails to give the same their full legal effect and expressly strikes down and nullifies the said Section 5436, and denies to this defendant in error the due process of law granted thereby and issued thereunder.

Sixth. That said decision overlooked a question decisive of the case, and duly submitted by counsel, to wit: That the failure of the plaintiff in error to have received actual notice of the suit brought against it was due only to the fact that it had wilfully failed, neglected and refused to appoint its own process agent, on whom summons could have been served, or to file in the office of the Secretary of State a copy of its charter, or Articles of Incor-

poration, thus leaving such officer without notice or information of any kind as to its place of domicile or the State where incorporated, and rendering it impossible for him to have notified the plaintiff in error, or to have communicated with it (see page 29 of printed brief).

Seventh. That said decision is in conflict with a controlling decision of this court, viz: *Olentine v. Alberty*, 82 Okla. 9, 198 Pac. 236, to the general effect: (a) that in alleging "unavoidable casualty or misfortune" such facts must be so stated as to make it appear that no reasonable or proper diligence or care could have prevented the trial, or judgment; that is, that the party complaining is not himself guilty of laches; and (b) that an application to vacate a default judgment is addressed to the sound discretion of the court, and will not be disturbed on appeal, unless it clearly appears that the court has abused its discretion, to which the attention of the court was called. (Printed brief, pages 34 and 35.) That said decision is in conflict with a controlling decision of this court of June 13, 1922, in the case of *Hutchings et al. v. Zumbrunn*, 86 Okla. 226, — Pac. —, to the same effect as *Olentine v. Alberty, supra*, set out in the preceding paragraph, to which the attention of the court was not called in the brief.

Eighth. That said decision overlooked a question decisive of the case, to wit: That the said petition to vacate was addressed to the sound discretion of the trial court, and its ruling thereon will not be disturbed on appeal, unless it clearly appears that the court has abused its discretion, no abuse of such discretion appearing from the record.

Wherefore, defendant in error prays that a re-hearing of said cause may be granted by your Honorable Court.

EVEREST, VAUGHT & BREWER,
and CHAS. L. MOORE,
Attorneys for Defendant in Error.
By CHAS. L. MOORE.

THEREAFTER, at the December, 1925, term, on the

eighth day of December, 1925, the following proceeding was had in said cause, to wit:

No. 14,994.—G. O. Richardson vs. Annie Scott, etc.

And now on this day it is ordered by the court that the petition for re-hearing filed in the above cause be, and the same is hereby granted.

THEREAFTER, at the October, 1926, term of said Supreme Court, on the ninth day of November, 1926, the following proceeding was had in said cause, to wit:

No. 14,994.—G. O. Richardson Machinery Company vs. Mrs. Annie Scott, etc.

And now this cause comes on for final decision and determination by the court upon the record and briefs filed therein.

And the court having considered the same finds that the judgment of the trial court in the above cause should be affirmed.

It is therefore ordered and adjudged by the court that the judgment of the trial court in the above case be and the same is hereby affirmed.

Opinion by MASON, J.

THEREAFTER, at the October, 1926, term of said court on the thirtieth day of November, 1926, the following proceeding was had in said cause, to wit:

No. 14,994.—G. O. Richardson Machinery Company vs. Annie Scott, etc.

And now on this day it is ordered by the court that the judgment in favor of defendant in error be entered against sureties on the supersedeas bond in said cause, as per journal entry to be filed by counsel.

(Filed in Supreme Court of Oklahoma Nov. 9, 1926. William M. Franklin, Clerk.)

In the Supreme Court of the State of Oklahoma.

Geo. O. Richardson Machinery Company, a corporation, plaintiff in error, vs. Mrs. Annie Scott, Administratrix of the estate of John A. Scott, deceased, with will annexed, defendant in error.—No. 14,004.

Syllabus.

1. Section 5442, Compiled Oklahoma Statutes 1921, which authorizes service of process on the Secretary of State in cases wherein a foreign corporation, which has no officer in this State and has not designated a person upon whom such service may be had, is defendant, does not violate the provisions of the State or Federal Constitutions guaranteeing to such foreign corporation due process of law and the equal protection of the law.

2. When a defendant seeks to vacate a default judgment rendered against him by reason of "unavoidable casualty or misfortune" under the 7th subdivision of Section 810, Compiled Oklahoma Statutes 1921, the facts must be so stated as to make it appear that no reasonable or proper diligence or care could have prevented the trial or judgment; that is, that the party complaining is not himself guilty of any laches.

3. The failure of the Secretary of State to notify a foreign corporation of the service of process on him as authorized by Section 5442, Compiled Oklahoma Statutes 1921, does not constitute such "unavoidable casualty or misfortune" as to warrant the vacation of a default judgment against such corporation under the 7th subdivision of Section 810, Compiled Oklahoma Statutes 1921.

Error from the District Court of Oklahoma County. Hon. James I. Phelps, Judge.

Action wherein John A. Scott obtained a judgment by default against Geo. O. Richardson Machinery Co.

From an order denying defendant's petition to vacate said judgment, the defendant appeals. Affirmed.

Linebaugh & Pinson, Muskogee, Oklahoma, for plaintiff in error.

Everest, Vaught & Brewer, Chas. L. Moore, Oklahoma City, for defendant in error.

MASON, Justice:

This action was commenced by John A. Scott, as plaintiff, against the Geo. O. Richardson Machinery Co., a foreign corporation doing business in this State, and which had no officer in this State and had not designated an agent in this State upon whom service of process might be made. Summons was served upon the Secretary of State as authorized in such cases by Section 5442, Compiled Oklahoma Statutes 1921. The defendant made default in appearance and a personal judgment was rendered for plaintiff and against the defendant on October 23, 1920. After the rendition of said judgment, the plaintiff, John A. Scott, died and the case has been revived in the name of Mrs. Annie Scott, administratrix of the estate of John A. Scott, deceased.

Thereafter, on July 14, 1921, the defendant filed its special appearance and motion to quash service of summons, and, upon defendant's application, the case was then removed to the District Court of the United States for the Western District of Oklahoma. Said court took evidence upon and determined the issues of fact and of law raised by the special appearance and expressly found that the judgment debtor was a foreign corporation doing an intrastate business in Oklahoma at the time of the institution of the suit; that it had made no appointment of an agent upon whom process might be served; that the State Statute (Sec. 5442, allowing service on the Secretary of State) applied to the judgment debtor and was constitutional and valid. Said Court remanded the case to the State court, after which the District Court of Oklahoma County retried

the issues raised by the special appearance and found that the judgment debtor had been legally and regularly served and refused to vacate the judgment.

Thereafter, on June 1, 1922, the defendant, in effect, entered its general appearance by filing its petition to vacate said judgment under the provisions of Section 810, Compiled Oklahoma Statutes 1921, and attached thereto its answer and cross-petition. The plaintiff waived the issuance and service of summons as provided for in such proceedings by Section 812, Compiled Oklahoma Statutes 1921, and filed a demurrer to said petition, which was subsequently sustained by the trial court and defendant's petition to vacate was dismissed, from which action the defendant has duly perfected its appeal to this Court.

For reversal, it is first urged that the trial court had no jurisdiction to render the original judgment in said case for the reason that Section 5442, *supra*, under which service of summons was had on the Secretary of State is in violation of Sec. 7, Art. 2 of the Constitution of Oklahoma, and the 14th amendment to the Constitution of the United States.

Counsel advance many arguments as to why said section should be held unconstitutional, but we are bound by the opinion in *Title Guaranty & Surety Co.* v. *Slinker*, 42 Okla. 811, 143 Pac. 41, wherein this Court held that said section does not violate the provisions of the State or Federal Constitutions guaranteeing to such foreign corporation due process of law and does not deny it the equal protection of the law.

It is next urged that the petition to vacate the judgment is in proper form and states facts which entitle defendant to have said judgment vacated and that the trial court erred in sustaining the demurrer thereto.

The petition to vacate was based on the 7th subdivision of Sec. 810, Compiled Oklahoma Statutes 1921, which provides:

"The district court shall have power to vacate or

modify its own judgments or orders, at or after the term at which such judgment or order was made: * * *

"Seventh. For unavoidable casualty or misfortune, preventing the party from prosecuting or defending."

Did the failure of the Secretary of State to notify the defendant company as to the service of said summons on him constitute such "unavoidable casualty or misfortune" as to entitle the defendant to have the default judgment vacated? Section 5442, Compiled Oklahoma Statutes 1921, which authorizes such service on the Secretary of State, provides:

"Any foreign corporation, doing business in the State of Oklahoma, having failed either to appoint an agent upon whom service of summons or other process may be had, or failed to file in the office of the Secretary of State a duly authenticated copy of its articles of incorporation or charter, or having failed to pay the license fee as required by law, then in the event of said foreign corporation having failed to comply with any of the provisions of the law as above referred to any person now or hereafter having any cause of action against any foreign corporation may file suit against said foreign corporation in any county in the state and service of summons or any process upon the Secretary of State shall be sufficient to give jurisdiction of the person to any court in this State having jurisdiction of the subject matter."

Said section nowhere requires the Secretary of State to notify the defendant of such proceedings. Plaintiff in error insists that it is the implied duty of the Secretary of State so to do, and where judgment is rendered against such foreign corporation without notice of such proceeding, the failure of the Secretary of State to notify the defendant constitutes "unavoidable casualty and misfortune" within the 7th subdivision of Sec. 810, *supra*. We cannot read such a provision into the statute, and it is ob-

vious that to do so would practically nullify said statute and greatly hamper and, in many instances, prevent many citizens of this State from obtaining redress and protection from foreign corporations doing an intra-state business in this State, as the Secretary of State would seldom know the address or location of such foreign corporations. A corporation incorporated in one state, subjects itself to the jurisdiction of every other state wherein it transacts a general intra-state business, and if it fails to comply with the laws of such other State, it is subject to all the regulations and penalties imposed thereby for such non-compliance. The defendant company, under the law, was accorded the right and privilege to select such a person as it might see fit, on whom legal process for it might be served, so as to insure knowledge to it of all suits which might be filed against said company in this State. Having failed to avail itself of this right and privilege, it thereby assented to the agent constituted by the statutes and this assent was made operative by its voluntarily invading the State and entering upon the transaction of its general corporate business. The Secretary of State, therefore, was as much the agent of the defendant company for the service of process in this case as was the president or other officer of such company.

In *Olentine et al. v. Alberty*, 82 Okla. 9, 198 Pac. 296, it was held that when "unavoidable casualty or misfortune" is alleged, the facts must be so stated as to make it appear that no reasonable or proper diligence or care could have prevented the trial or judgment—that is, that the party complaining is not himself guilty of any laches.

The defendant company could easily have protected itself against such judgment having been rendered without actual notice to it by complying with the laws of this State relative to non-resident corporations doing business within the State. If failed, neglected or refused to do this, and this Court, under the law announced under *Olentine et al. v. Alberty, supra*, cannot relieve it from the consequence of its own neglect.

The judgment of the trial court is affirmed.

Branson, V. C. J., Lester, Hunt, Clark and Riley, JJ., concur. Phelps, J., disqualified.

(Filed in Supreme Court of Oklahoma Nov. 23, 1926. William M. Franklin, Clerk.)

In the Supreme Court of the State of Oklahoma.

Geo. O. Richardson Machinery Company, a corporation, Plaintiff in Error, vs. Mrs. Annie Scott, Administratrix of Estate of John A. Scott, deceased, with will annexed, Defendant in Error.—No. 14,004.

APPLICATION FOR RE-HEARING.

Comes now the plaintiff in error, and prays the Court to grant a re-hearing herein in the above styled and numbered cause, and to vacate, and set aside, the opinion rendered herein on November 9, 1926, and for grounds of said application, states:

1. That the court has failed to consider certain phases of the cause which the opinion entirely overlooks, which matters were raised by the brief of the plaintiff in error.

2. That said decision is in conflict with the decisions of the Supreme Court of the United States, which is controlling.

3. That the decision is in conflict with certain federal decisions, referred to in the brief, and not discussed or considered in the opinion.

4. That the opinion is based upon the case of Title Guaranty Company vs. Slinker, which does not control.

5. The opinion incorrectly construes the record.

Plaintiff in error discusses each of these matters in turn in the brief appended hereto and made a part hereof, and prays that this, its application for rehearing, be sus-

tained, and that if the Court shall see fit, oral argument be heard by the Court at a convenient day to be set.

LINEBAUGH & PINSON,
Attorneys for Plaintiff in Error.

THEREAFTER, at the December, 1926, term of said Supreme Court, on the twenty-first day of December, 1926, the following proceeding was had in said cause, to wit:

14,004.—Richardson Machinery Company vs. Scott.

And now on this day it is ordered by the Court that the petition for rehearing filed in the above cause be and the same is hereby denied.

In the Supreme Court of the State of Oklahoma.

(Filed in Supreme Court of Oklahoma,
Feb. 2, 1927. Jessie E. Moore, Clerk.)

George O. Richardson Machinery Co., Plaintiff in Error, vs. Annie Scott, Administratrix of the estate of John A. Scott, deceased, Defendant in Error.—No. 14,694

ORDER.

Now on this 1st day of February, 1927, came on to be heard, before the Court, the motion of plaintiff in error to recall the mandate of this Court, heretofore issued herein, until such time as plaintiff in error may present to the Supreme Court of the United States its petition for writ of certiorari, and thereafter, if said petition be granted, until the same shall be acted upon by the Supreme Court of the United States; and the Court, being well and sufficiently advised in the premises, is of the opinion said motion shall be sustained.

Therefore, it is ordered, that all proceedings under the mandate heretofore issued in this case, to the District Court of Oklahoma County, State of Oklahoma, be and the same is hereby stayed until further orders of this Court.

Done by Order of the Court.

(Signed) FRED P. BRANSON,
Chief Justice, Supreme Court of Oklahoma.

(Seal)

Attest:
JESSIE E. MOORE, Clerk.
By JESSIE PARDOE, Deputy.

In the Supreme Court of the State of Oklahoma.

CERTIFICATE OF CLERK.

I, Jessie E. Moore, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the foregoing 230 pages numbered from 1 to 230, both inclusive—are a full, true and complete transcript of the record and all proceedings in said court, in cause numbered 14,004, entitled Geo. O. Richardson Machinery Company, a corporation, plaintiff in error, versus John A. Scott (revived in the name of Mrs. Annie Scott, Administratrix of the Estate of John A. Scott, deceased, with will annexed), defendant in error, except the typewritten pages of the case-made numbered 257 to 271, both inclusive, being duplicates of pages 240 to 254, both inclusive; also pages 312 to 336, both inclusive, being duplicates of pages 30 to 53, both inclusive; also pages 339 to 357, both inclusive, being duplicates of pages 55 to 72, both inclusive; also pages 379 to 392 and pages 397 to 405, page 408 and pages 410 to 414, which contain applications and orders pertaining to the extension of time and settlement of the case-made; also page 418, which is in blank, being notice of settlement of case-made, but not signed.

In witness whereof, I hereto set my hand and affix the seal of said court, at Oklahoma City, Oklahoma, this 12th day of February, 1927.

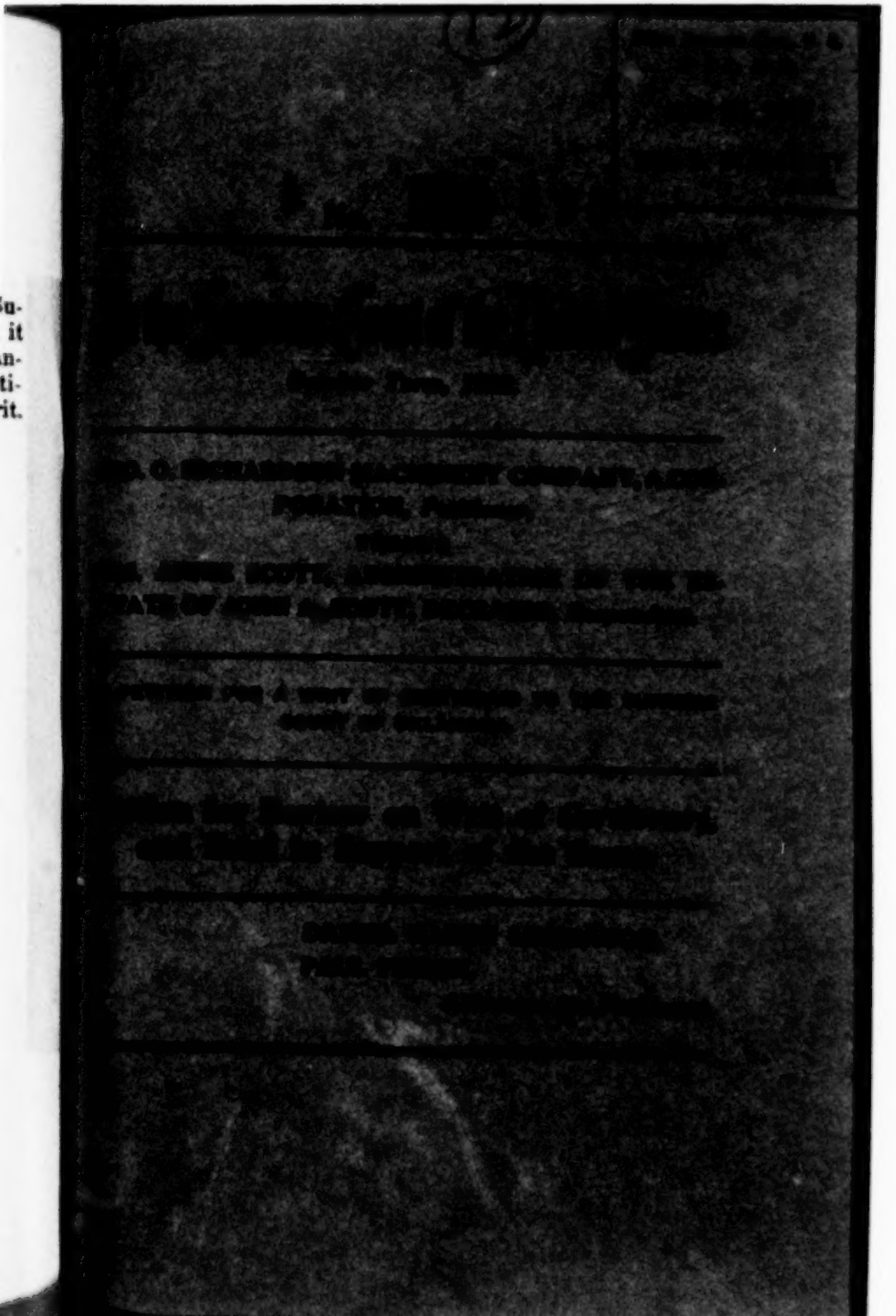
JESSIE E. MOORE,
Clerk Supreme Court, Oklahoma

By Jessie Pardee
Deputy.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 25, 1927

The petition herein for a writ of certiorari to the Supreme Court of the State of Oklahoma is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.



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IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1926.

No. .....

GEO. O. RICHARDSON MACHINERY COMPANY, A CORPORATION, *Petitioner,*

vs.

MRS. ANNIE SCOTT, ADMINISTRATRIX OF THE ESTATE OF JOHN A. SCOTT, DECEASED, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA.

PETITION FOR REVIEW ON WRIT OF *CERTIORARI.*

To the honorable, the Supreme Court of the United States:

Geo. O. Richardson Machinery Company respectfully shows to this honorable court that on the 10th day of September, 1920, John A. Scott, respondent's intestate, filed in the District Court of Oklahoma County, State of Oklahoma, his petition against Geo. O. Richardson Machinery Company, seeking damages on five separate causes of action, briefly stated as follows:

The first cause of action (Tr., p. 2) sets out that plaintiff is a resident of Oklahoma, engaged in threshing grain,

and, at times, as agent of the petitioner, in selling threshing machinery. That the defendant, Geo. O. Richardson Machinery Company, is a foreign corporation, having its home office and principal place of business in the City of Saint Joseph, in Buchanan County, Missouri, with branch office at Wichita, Kansas, and engaged in selling threshing machines. That the defendant, though engaged in business within the State of Oklahoma, had failed, neglected and refused to appoint an agent for service of legal process, as provided by the laws of the State of Oklahoma, and for this reason plaintiff asked to be permitted to serve the summons upon the Secretary of State. The further allegations are immaterial, as the first cause of action was subsequently dismissed. (Tr., p. 15.)

In the second cause of action it was alleged (Tr., p. 3) that the plaintiff ordered certain parts and repairs for a threshing machine which were sent C.O.D. from Saint Joseph, Missouri, to Hobart, Oklahoma, and which parts were returned by the plaintiff, together with a trunnion, of the value of $20.00, with freight and drayage charges in the sum of $3.00. Plaintiff, therefore, prayed judgment for $185.53.

The third cause of action (Tr., p. 4) alleges the purchase in Wichita, Kansas, of certain parts and repairs, the payment of $10.00 to apply on the purchase price and the balance to be collected on delivery, and that on said parts and repairs he was overcharged in the sum of $60.83, which overcharge was paid and retained by the defendant.

The fourth cause of action (Tr., p. 5) sets out that the defendant fraudulently shipped parts and repairs on certain orders which did not fit the machine owned by plaintiff; that plaintiff thereby lost seven days time during the threshing season of 1919, and was thereby damaged in the sum of $1,170.00.

The fifth cause of action (Tr., p. 6), sets out that by reason of the intentional shipment by the defendant of mismatched and non-fitting parts, the plaintiff lost certain contracts in which his net profits would have amounted to $2500.00.

For the reasons assigned, the plaintiff prayed judgment for $4336.59 (Tr., p. 7), and $3000.00 as punitive damages.

On the date the petition was filed, summons was issued (Tr., p. 10), commanding the sheriff of Oklahoma County, to serve on the Secretary of State, for Geo. O. Richardson Machinery Company, a corporation, "home office at Saint Joseph, Missouri," and as appears from the return (Tr., p. 11) the same was served by a deputy sheriff on J. S. Morris, Secretary of State of Oklahoma.

On the 23rd day of October, 1920, the defendant was adjudged in default (Tr., p. 12) and judgment rendered for the sum of $3948.45. (Tr., pp. 13, 15.)

On July 14, 1921, the defendant, Geo. O. Richardson Machinery Company, filed a special appearance and motion to quash summons (Tr., pp. 16, 20), setting out that service of summons was had upon the Secretary of State of the State of Oklahoma, and upon no other person; that the defendant

received no notice of the pendency of said suit, nor of the rendition of said judgment, until about the 1st day of July, 1921, and had no opportunity to appear and plead or defend; and that it had a valid defense to the action; that the defendant was not engaged at the date of the institution of said suit in doing business within the State of Oklahoma, but was engaged in a purely interstate business with the residents of Oklahoma; that the Secretary of State was not the agent of the defendant company, but that the defendant believes that the summons was issued by virtue of Section 1339, of the Revised Laws of Oklahoma of 1910, which provided for service upon the Secretary of State to obtain personal judgment against a non-resident corporation doing business within the state without appointing an agent for service. The defendant further charged that said Section 1339 is in conflict with the Constitution of the United States, and particularly with the Fourteenth Amendment thereto, in that said section does not provide for giving of notice to such corporations by the Secretary of State; and for other reasons does not comport with the said amendment; and deprives the defendant of property without due process of law; and that said section is void and inoperative, and that service of process thereunder did not give to the District Court of Oklahoma County jurisdiction of the defendant, whether engaged in doing business intrastate or not. (Section 1339, mentioned above, is Section 5436, Comp. Okla. Stat. 1921, and is substantially repeated in Section 5442, Comp. Okla. Stat. 1921, hereafter referred to.)

The defendant thereupon filed its notice, petition, and bond for removal of the cause to the United States District

Court for the Western District of Oklahoma, and duly docketed the case. Judge COTTERAL, of that court, after making certain findings of fact, and of law, to the effect that the trial court had jurisdiction, remanded the cause to the state court on the 27th day of April, 1922.

On the 1st day of June, 1922, the cause came on to be heard in the state court, upon the special appearance and motion to quash, which had been theretofore presented in the federal court. Evidence was taken relative thereto and (Tr., p. 201) the motion to quash was overruled and exceptions allowed. As has been observed, the motion to quash avers (Rec., p. 32) that Section 1339, Revised Laws of Oklahoma, 1910 (Compiled Oklahoma Statutes, 1921, Sections 5436 and 5442), authorizing service of summons upon the Secretary of State, is in conflict with the Constitution of the United States, and particularly, with the Fourteenth Amendment thereto.

Petitioner thereafter, on June 1, 1922, filed in the state court its petition, in the nature of an equitable proceeding to vacate the judgment (Tr., p. 29). Petitioner alleged the rendition of the judgment against it by default, pursuant to service of summons on the Secretary of State; that it had no opportunity to appear and defend, and had no notice of the pendency of the action until July, 1921, and had no notice that the plaintiff made any claim of indebtedness; that the summons was served upon an allegation fraudulently made; that this petitioner was engaged in business within the State of Oklahoma, within the meaning of the Statutes of Oklahoma, relating to service upon foreign corporations;

that the judgment was rendered upon false and fraudulent testimony; that the defendant was not doing business within the meaning of the Oklahoma Statutes, and was not entitled to be served by summons delivered to the Secretary of State of Oklahoma.

The defendant further alleged that if it was in truth and in fact doing business within the State of Oklahoma, it was not so advised, but that, irrespective of that fact, it was entitled to be heard in its own defense, and to be notified of the pendency of the action. That there was no duty devolving upon the Secretary of State by law, to notify it of the pendency of such action; and that no duty devolved upon it by reason of any relation between it and the Secretary of State. That it is engaged solely in interstate commerce; that the service upon it is wholly invalid and irregular; that the court acquired no jurisdiction thereby; and that the rendition of such judgment without any kind or character of notice to the defendant was a violation of its constitutional rights.

Summons on the petition was waived by the plaintiff, and the plaintiff entered his appearance and asked twenty days to answer. On the 7th day of June, plaintiff filed demurrer to this petition. (Tr., p. 200.) The demurrer avers *(1)* that the petition states no cause of action; *(2)* that defendant is a foreign corporation which has failed to meet the requirements of the state statutes, requisite to a justiciable right under the petition; and *(3)* "that the said petition affirmatively shows that defendant corporation is without legal capacity to maintain in the state court of Okla

homa any action or legal proceeding for affirmative relief based on alleged corporate rights."

On the 16th day of June, 1922, the District Court of Oklahoma County entered its judgment, sustaining the demurrer generally (Tr., p. 201), the defendant refused to plead further, and the petition to vacate judgment was dismissed. This judgment was superseded, and by proper procedure reached the Supreme Court of Oklahoma, the highest judicial tribunal of said state in civil appeals.

On the 14th day of October, 1924, that court rendered its opinion (Tr., p. 217), holding that under Section 5436, Compiled Oklahoma Statutes, 1921, the statute authorizing the service had, it was the implied duty of the Secretary of State to give timely notice to the defendant that it had been sued; reversing the trial court. Thereafter, the cause was revived in the name of the administratrix of John A. Scott, deceased (Tr., p. 218), and a motion for rehearing (Tr., p. 219) was heard and sustained. (Tr., p. 222.) On the 9th day of November, 1926, an opinion was rendered (Tr., p. 223), to the effect that there was no implied duty of the Secretary of State under Section 5442, Comp. Okla. Stat. 1921, to give notice of the service upon him of process directed to a foreign corporation; and, that the statute providing for such service is not in conflict with the Constitution of the United States, nor the Fourteenth Amendment thereto. The judgment of the trial court was affirmed. On December 21, 1926, petition for rehearing on this opinion was denied. (Tr., p. 229.)

A transcript of the record in the case, including the proceedings in the Supreme Court of the State of Oklahoma, accompanies this petition. The said transcript shows the facts as herein set out at the pages referred to.

Your petitioner is advised and believes that the judgment of the Supreme Court of the State of Oklahoma is erroneous, and that this honorable court should require the case to be certified to it for review and determination in conformity with the provisions of the Judicial Code for the following reason:

Because the Supreme Court of the State of Oklahoma has decided a federal question of substance, not heretofore determined by this court, in this, towit: It has construed Section 5442, Compiled Statutes of Oklahoma of 1921, as not requiring the Secretary of State of the State of Oklahoma, when served with process on a foreign corporation to give notice to the defendant that it has been sued; and yet has held that the statute constitutes due process of law and is not in conflict with the Constitution of the United States, nor with the Fourteenth Amendment thereto.

The said section is as follows:

> "Any foreign corporation doing business in the State of Oklahoma, having failed either to appoint an agent upon whom service of summons or other process may be had, or failed to file in the office of the Secretary of State a duly authenticated copy of its articles of incorporation or charter, or having failed to pay the license fee as required by law, then in the event of said foreign corporation having failed to comply with any of the provisions of the law as above referred to, any

person now or hereafter having any cause of action against any foreign corporation may file suit against said foreign corporation in any county in the state and service of summons or any process upon the Secretary of State shall be sufficient to give jurisdiction of the person to any court in this state having jurisdiction of the subject-matter."

The petitioner avers that by reason of said judgment and decision of the Supreme Court of Oklahoma, so affirming the judgment and decision of the trial court, towit: The District Court of Oklahoma County, State of Oklahoma, it is about to be deprived of its property without due process of law, and so to be deprived of a right guaranteed to it by the Constitution of the United States, and especially by the Fourteenth Amendment thereto.

Wherefore, your petitioner respectfully prays that writ of *certiorari* may be issued out of and under the seal of this court, directed to the Supreme Court of the State of Oklahoma, commanding that court to certify and send to this court on a day certain, to be therein designated, a full and complete transcript of the record and the proceeding of the said Supreme Court of the State of Oklahoma, in the cause entitled *Geo. O. Richardson Machinery Co.* v. *John A. Scott* (revived in the name of Annie Scott, administratrix), No. 14004, to the end that the said case may be reviewed and determined by this court as provided by the judicial code; that your petitioner may have such other and further relief in the premises as this court may deem appropriate and in conformity with provisions of law, and that the decision of said Supreme Court of the State of Oklahoma,

affirming the judgment of the trial court, and every part thereof, may be reversed by this honorable court, and an appropriate judgment rendered herein.

GEO. O. RICHARDSON MACHINERY COMPANY, Petitioner;
DANIEL HADEN LINEBAUGH,
PAUL PINSON,
Attorneys for Petitioner.

State of Oklahoma,
County of Muskogee,

Paul Pinson, being first duly sworn, states that he is one of counsel for petitioner herein, and is acquainted with all proceedings had in the above entitled and numbered cause, and is familiar with the contents of the above and foregoing petition, and that the facts and things stated in said petition are true to the best of his knowledge and belief.

.....

Subscribed and sworn to before me this the ... day of ....., 1927 ..... Notary public. My commission expires Sept. 15, 1927.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1926.

No. .....

GEO. O. RICHARDSON MACHINERY COMPANY, A CORPORATION, *Petitioner,*

vs.

MRS. ANNIE SCOTT, ADMINISTRATRIX OF THE ESTATE OF JOHN A. SCOTT, DECEASED, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF *CERTIORARI.*

Section 5442, Compiled Oklahoma Statutes, 1921, as construed by the Supreme Court of the State of Oklahoma, is in conflict with the Federal Constitution and the Fourteenth Amendment thereto.

John A. Scott sues the Geo. O. Richardson Machinery Company, to recover a personal judgment, and serves the Secretary of State of the State of Oklahoma.

Compiled Oklahoma Statutes, Section 5442 is as follows:

5442. "Any foreign corporation doing business in the State of Oklahoma, having failed either to appoint an agent upon whom service of summons or other process may be had, or failed to file in the office of the Secretary of State a duly authenticated copy of its articles of incorporation or charter, or having failed to pay the license fee as required by law, then in the event of said foreign corporation having failed to comply with any of the provisions of the law as above referred to, any person now or hereafter having any cause of action against any foreign corporation may file suit against said foreign corporation in any county in the state and service of summons or any process upon the Secretary of State shall be sufficient to give jurisdiction of the person to any court in this state having jurisdiction of the subject-matter."

He recovered judgment by default against this petitioner for $3948.45, the defendant having no notice of the suit, and judgment being rendered by default. Some months after judgment the defendant learned of it. Then the cause was removed to the federal court, and a special appearance and motion to quash summons was presented, questioning the constitutionality of this section. The federal court held that the defendant was a foreign corporation doing business within the state, and that it had not designated an agent for service, and that the service was duly had as provided by statute; that the statute is constitutional and valid, and that the cause should be removed. (Tr., p. 28.)

The removal was, of course, not a general appearance, nor was the special appearance and motion to quash.

—*Goldey* v. *Morning News*, 156 U. S. 518, 39 L. ed. 517.

The order of court remanding the cause to the state court was not final nor appealable, nor was there any other remedy whereby the rights of the removing party might be reviewed or protected.

—*Missouri Pacific Railway Co.* v. *Fitzgerald*, 160 U. S. 557, 40 L. ed. 536.

And the presentation of the federal question in the special appearance and motion to quash was in no wise such a final judgment that it became conclusive between the parties after the motion to remand was sustained

—*Missouri Pacific Railway Co.* v. *Fitzgerald*, 160 U. S. 557, 40 L. ed. 536.

The motion to quash, after remand, was presented to the state court and there overruled. (Transcript of record, p. 201.)

Defendant immediately filed statutory petition to vacate judgment (Tr., p. 29, *et seq.*) describing the nature of the service, and the lack of notice. It was charged that "it was entitled to be heard and entitled to be notified of the pendency of said proceedings;" "that defendant had no opportunity to appear and be heard in its own defense;" "that there was no duty devolving upon the Secretary of State of the State of Oklahoma, either by law or by any relation between the said Secretary of State and this defendant, to disclose to this defendant that summons had been served upon him;" and further "that the rendition of such judgment without any kind or character of notice to the defendant is a violation of its constitutional rights."

The constitutional rights referred to are, of course, stated at page 17, of the record, in the special appearance and motion to quash summons, wherein it is alleged:

> "That said section of the laws of Oklahoma, so providing, is to that extent in conflict with the Constitution of the United States, and particularly with the Fourteenth Amendment thereto, in that the said section does not provide for the giving of notice to such corporations by the said Secretary of State and for said reason, and for other reasons, does not comport with the said amendment, and seeks to deprive this defendant, or such persons or corporations as it may refer to, of property without due process of law; and, that said section is void and inoperative and service had thereunder does not give the courts of Oklahoma jurisdiction of this defendant, or of any corporation non-resident within the said state, whether engaged in doing business within the state or not."

The petition to vacate judgment does not seek to evade the trial of the cause, or the jurisdiction of the court, in the event the judgment should be set aside. Under our code of blended law and equity, it serves the purpose of an equitable attack upon the validity of the judgment.

To this petition a demurrer was sustained (Tr., p. 204), and the petition dismissed. Petitioner appealed to the Supreme Court of the State.

It will be observed that the Supreme Court treated this record as sufficient to present the constitutional question. In its second opinion, rendered November 9, 1926 (Tr., p. 225), it is said:

> "For reversal, it is first urged that the trial court

had no jurisdiction to render the original judgment in said cause for the reason that Section 5442, *supra*, under which service of summons was had on the Secretary of State is in violation of Sec. 7, Art. 2, of the Constitution of Oklahoma, and the Fourteenth Amendment to the Constitution of the United States."

"Counsel advance many arguments as to why said section should be held unconstitutional, but we are bound by the opinion in *Title Guaranty & Surety Co. v. Slinker*, 42 Okl. 811, 143 Pac. 41, wherein this court held that said section does not violate the provisions of the state or federal constitutions guaranteeing to such foreign corporation due process of law and does not deny it the equal protection of the law."

We shall not therefore discuss the state procedure in this regard.

The first opinion, rendered in 1924 (Tr., p. 216), was quite different. We quote therefrom:

"In a case where the only service of process had upon a foreign corporation as defendant was the service of summons upon the Secretary of State, *it was his implied duty to cause timely notice thereof to be given to such foreign corporation*, and where he failed to do so and the foreign corporation acquired no actual knowledge of the pendency of the suit until personal judgment was rendered against it therein, such facts constitute an 'unavoidable casualty or misfortune preventing the party * * * defending,' as defined in Section 810, C.O.S. 1921. To permit such judgment to stand would contravene the basic principles of American jurispurdence and shock the very soul of justice." (Italics ours.)

Under this construction of the statute, the objectionable feature which we shall urge, was eliminated; and, the statute was not unconstitutional.

But, in the later opinion, which we now ask this court to review, it is held that:

> "Said section nowhere requires the Secretary of State to notify the defendant of such proceedings. Plaintiff in error insists that it is the implied duty of the Secretary of State so to do * * *. We cannot read such a provision into the statute * * *." (Tr., p. 226.)

We concede that this is a rational construction of the statute, but as indicated by the former opinion, is not the only conceivable construction. Therefore, until the latter opinion became the law of the state, and until the court, in the light of the present construction, had held that the statute does not violate "the Fourteenth Amendment to the Constitution of the United States;" nor "the provisions of the state or federal constitutions, guaranteeing to such foreign corporation due process of law," and "the equal protection of the law," the question of its constitutionality could not be presented to this court. We are therefore presenting the question at our first opportunity.

It will not be disputed that the state has a right to provide a method of service which will permit its citizens to enforce within its boundaries their claims against a foreign corporation doing business within the state. It is not contended that constructive service is ineffectual for such purpose in all cases where a foreign corporation is involved.

It is contended, however, that decisions sustaining personal judgments on constructive service are based upon the implied or express assent of the corporation to the appoint

ent of the person named as agent for service. In fact it s been held that a non-resident domestic corporation, oing business within the state, may be compelled by mandamus to accept a state officer as its agent for service.

—*St. Mary's Franco-American Petroleum Co.* v. *State of W. Va.*, 203 U. S. 183, 51 L. ed. 144.

There must be, moreover, either actual notice to the ompany or such method of service as will reasonably tend give actual notice of the institution of the suit.

Thus, in Rhode Island, where the defendant did not ppear to plead to the jurisdiction and was not shown to ave received notice, either actual or constructive, no jurisiction was acquired.

—*Labranc* v. *Imperial Council*, 38 L. R. A. 546.

In *Rothrock* v. *Insurance Company*, 161 Mass. 423, 23 . R. A. 863, it was said that unless the stipulation appointg the auditor agent for service was filed, the foreign inurance company had no right to do business within the tate and if it violated the law in that respect, no service ould be had upon the auditor, and no jurisdiction thus obained. That the remedy was by punishment of the corporion for failure to regard the requirements of the statute.

In *Straub* v. *Lyman Ins. Co.* (S. D.), 46 L. R. A. (N. S.) 41, it is said (p. 943):

"It is also held that due process does not require that there be actual personal notice to the party whose property is in question. It is sufficient if a kind of notice is provided by which *it is reasonably probable that*

the party proceeded against will be apprised of what is going on against him, and an opportunity offered him to defend. * * The fundamental principle involved in 'due process of law' is that it shall give sufficient notice of the pendency of the action or proceeding, and a reasonable opportunity to the defendant to appear and assert his rights before a tribunal legally constituted to adjudicate such rights. And whenever a statutory mode of service is reasonably designed to accomplish that end, service in accordance therewith constitutes due process of law, and confers jurisdiction on the court."

The Oklahoma Supreme Court, in the case of *State* v. *Hooker*, 22 Okl. 712, 98 Pac. 964, speaking through Chief Justice WILLIAMS, said:

"Does said act violate the provisions of section 7, article 2, of the Constitution of Oklahoma, or the Fourteenth Amendment to the Constitution of the United States, in that no provision is made for any legal notice, constructive or otherwise, of the time and place or the person or tribunal before whom the hearing shall be had to determine whether or not the property taken under the search warrant shall be forfeited? To invest a court with effectual jurisdiction in said case, the thing in controversy, or the parties to such action, must be subjected to the process of the court. Certain cases may proceed *in rem*, notice being taken rather of the thing in controversy than of the party concerned, and the process is to be served upon that which is the subject of the action, without special reference or notice to the parties interested. In such proceedings *in rem* a substituted service may be provided by statute in such cases, in the form of a notice published in the public journals, or posted as may be directed by stat

ute, the mode to be chosen with a view to bring it home if possible to the knowledge of the parties being affected and to give them an opportunity to appear and defend, and the power of the legislature to prescribe such notice and give it effect as process, rests upon the necessity of the cases, and has long been recognized and acted upon. Such notice, however, is restricted, so as to enable the court to give effect to the proceeding so far as it is one *in rem;* but whenever the *res* is disposed of the authority of the court ceases, and such notice cannot be made available for additional purposes. *When the legislature prescribes a kind of notice by which it is reasonably probable that the party proceeded against will be apprised of what is going on against him, and an opportunity is afforded him to defend*, the courts will not exercise the power to pronounce the proceeding illegal."

Another section of the statute was there involved, but the principle is clearly applicable, the policy of the state well indicated.

In *Connecticut Mutual Life Insurance Co.* v. *Spratley*, 172 U. S. 603, 43 L. ed. 569, a statute similar to the Oklahoma Statute was approved. But we note the following facts as significant:

(1) The statute (quoted in the margin of the opinion), provided for service by mail not only by the court clerk, but also by the plaintiff.

(2) The court after discussing the power or authority of the agent who was served, said through Mr. Justice Peckham:

"Taken in connection with the further fact of sending (as provided for in the statute), a copy of the

process and notice thereof by registered letter to the home office of the company, and also the personal service upon the company of a copy of the process and notice thereof at its home office, it must be admitted that one of the chief objects of all such kinds of service, namely, notice and knowledge on the part of the company of the commencement of suit against it, is certainly provided for. We do not intimate that mere knowledge or notice as thus provided would be sufficient without a service on the agent in the state where suit was commenced, but we refer to it as a part of the facts in the case."

In the following cases statutes similar to the Oklahoma statute have been held unconstitutional:

King Tonopah Mining Co. v. *Lynch*, 232 Fed. 485:

In this case service was had upon the Secretary of State and no notice was given to the company. A very interesting discussion is there presented, and many authorities cited, and the court held that the service under the Nevada statute did not constitute due process of law.

Knapp v. *Bullock Tractor Co.*, 242 Fed. 543:

Here Civil Code of California, Section 405, was held to violate "the due process clause of the Constitution, so far as it authorizes service on the Secretary of State without requiring him to give any notice to the corporation."

Southern Railway Co. v. *Simon*, 184 Fed. 959:

In this opinion the Louisiana service statute was under consideration and it was

"*held*, that there being no provisions in such act for actual notice to the corporation, either within or with

out the state, by mail or otherwise, in case of service on the Secretary of State, such service was insufficient."

The Arkansas Statute was held unconstitutional in *Cella Commission Co.* v. *Bahlinger*, 147 Fed. 419 (78 C.C.A. 467).

To the same effect are *Gouner* v. *Mississippi Valley Bridge and Iron Works*, 49 Southern 657; *Pinney* v. *Providence Loan & Trust Co.* 106 Wis. 396, 82 N. W. 308; *Wildes* v. *Mining Co.* (Nevada), 170 Pac. 1047.

We believe that there are no authorities to the contrary. The Oklahoma decision stands alone. The sole authority cited is another Oklahoma case, *Title Guaranty Co.* v. *Slinker*, 42 Okl. 811, 143 Pac. 41. That case presents the question of discrimination, the question of notice was not involved. Referring to that opinion, we find cited to support its views, the following cases:

Mutual Reserve Fund Co. v. *Phelps*, 190 U. S. 147;
Northwestern Life Ins. Co. v. *Riggs*, 203 U. S. 243;
Orient Ins. Co. v. *Daggs*, 172 U. S. 557;

as well as *St. Mary's Franco-American Petroleum Co.* v. *West Virginia*, *supra*. In none of these cases is the question of notice involved.

It is noteworthy that in the case of *Mutual Reserve Fund Co.* v. *Phelps*, the statute in controversy provided:

"That if process is served upon the commissioner it shall be his duty to at once send it by mail addressed to the company at its principal office."

The State of Oklahoma provides for service upon non-resident individuals in certain classes of action *in rem* by

publication, but provides (Section 252, Compiled Oklahoma Statutes 1921):

> "That where service by publication is proper, a copy of the petition, with copy of the publication notice attached thereto, shall, within six days after the first publication is made, be enclosed in an envelop, addressed to the defendant at his place of residence or business, postage paid, and deposited in the nearest post office."

Section 6683, Compiled Oklahoma Statutes, 1921, provides for service upon the Insurance Commissioner as to any foreign insurance company doing business within the state, but further provides that,

> "it is hereby made the duty of the Insurance Commissioner to promptly, after such service of process, forward by registered mail an exact copy of such notice to the company; or, in case the company is of a foreign country, to the resident manager in this country; and also, shall forward a copy thereof to the general agent of said company in this state."

The statute therefore presents not only a complete failure of due process of law, but in the light of the other statutes above referred to, presents an unreasonable discrimination against corporations not engaged in the insurance business, in that no reason can be advanced for the classification which would permit service without notice against one class of corporations and not against another.

In *Southern Ry. Co.* v. *Simon, supra*, an appeal was taken. And thereupon this honorable court, adopting the narrowest possible ground for holding void a judgment acquired under a statute similar to the one in question, *held*

(236 U. S. 116), that the "service on the Southern Railway, even if in compliance with the requirements of Act 54, was not that kind of process which could give the court jurisdiction over the person of the defendant for a cause of action arising in Alabama." For this reason the court held that the judgment was a nullity.

The allegations of plaintiff's petition show that the actions here joined, had their origin in a foreign state. For that reason if for no other, the particular service here had must be deemed to be invalid and the judgment void.

We, therefore, respectfully urge that in the light of the authorities referred to, this court should review by *certiorari* the decision of the Supreme Court of the State of Oklahoma affecting the constitutionality of certain sections above referred to, and should hold and adjudge that the judgment rendered under such sections, by service upon the Secretary of State, is void; and, that said sections of the Oklahoma Statutes are unconstitutional, and should reverse and remand this cause, to the end, not that the non-resident corporation may entirely escape the jurisdiction of the state court, but that it may submit itself to the jurisdiction for the purpose of trying, in an orderly manner, the issues tendered by the plaintiff, rather than submitting to an unconscionable judgment, rendered without knowledge of the claim or notice of the proceedings.

Respectfully submitted,

DANIEL HADEN LINEBAUGH,
PAUL PINSON,
Attorneys for Petitioner.

[redacted]

[redacted]

October Term, 1926.

[redacted]

GEO. O. RICHARDSON MACHINERY COMPANY, A CORPORATION, Petitioner,

vs.

MRS. ANNIE SCOTT, ADMINISTRATRIX OF THE ESTATE OF JOHN A. SCOTT, DECEASED, Respondent.

[redacted]

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA.

[redacted]

BRIEF OF PETITIONER.

[redacted]

D. HADEN LIEBHAUSER,
PAUL PRESON,
Attorneys for Petitioner.

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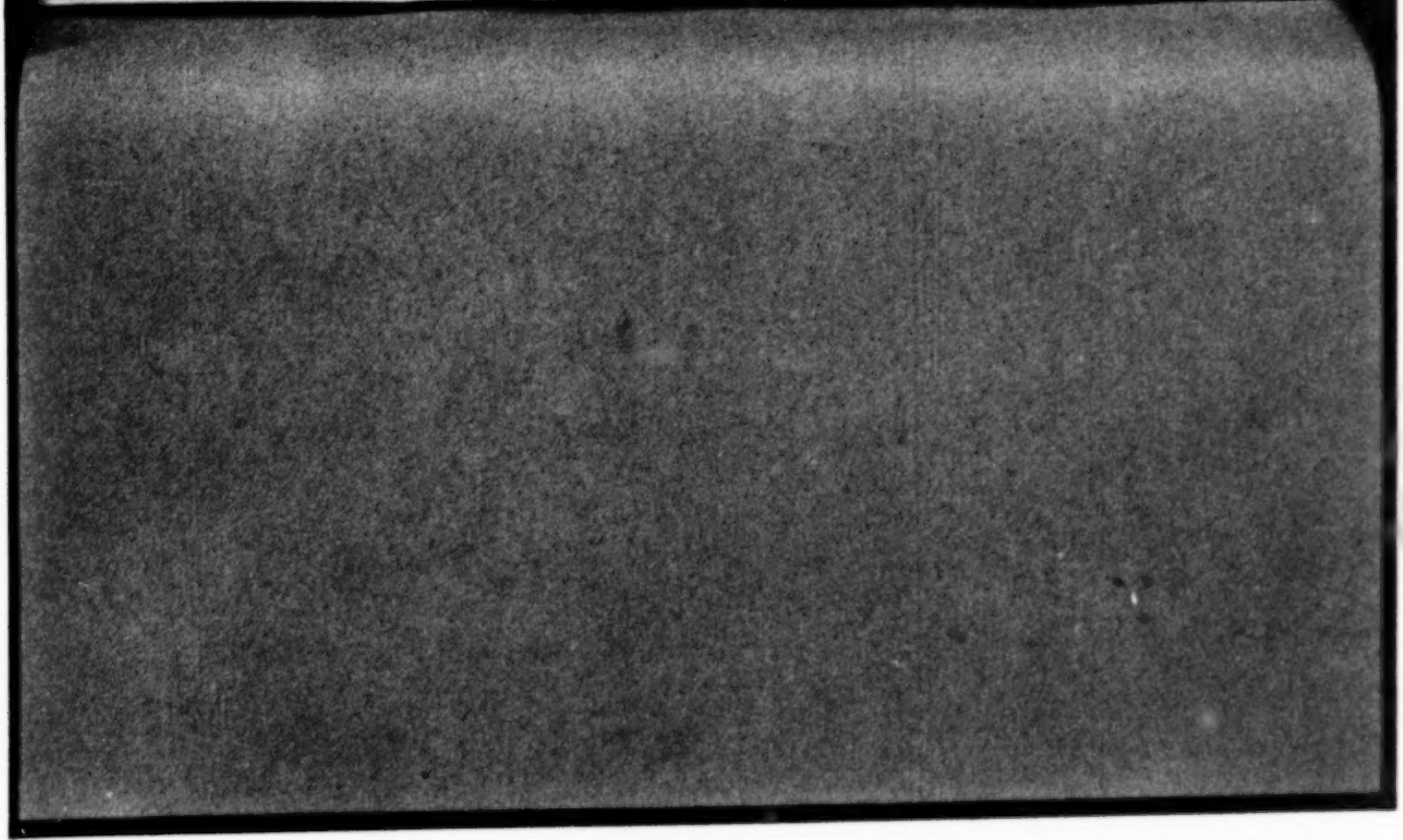

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THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1926

No. 988

EO. O. RICHARDSON MACHINERY COMPANY, A CORPORATION, *Petitioner,*

vs.

RS. ANNIE SCOTT, ADMINISTRATRIX OF THE ESTATE OF JOHN A. SCOTT, DECEASED, *Respondent.*

N PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA.

BRIEF *of* PETITIONER.

Petitioner, a corporation of Missouri, was sued in the urts of Oklahoma. Summons was served and service tained only on the Secretary of State. The Oklahoma nstructive service statutes, sections 5436 and 5442, Comled Oklahoma Statutes 1921, are as follows:

"5436. *Process served on Secretary of State, when.* In all cases where a cause of action shall accrue to a resident or citizen of the State of Oklahoma, by reason

of any contract with a foreign corporation doing business in this state, or where any liability on the part of such foreign corporation shall accrue in favor of any citizen or resident of this state, whether in tort or otherwise, and such foreign corporation has not designated an agent in this state upon whom process may be served or has not an officer continuously residing in this state, upon whom summons or other process may be served so as to authorize a personal judgment, service of summons or other process may be had upon the Secretary of State, and such service shall be sufficient to give jurisdiction of the person to any court in this state having jurisdiction of the subject-matter, whether sitting in the county where the Secretary of State is served or elsewhere in the state."

"5442. *Corporation's non-compliance with law—venue—process.* Any foreign corporation, doing business in the State of Oklahoma, having failed either to appoint an agent upon whom service of summons or other process may be had, or failed to file in the office of the Secretary of State a duly authenticated copy of its articles of incorporation or character (charter), or having failed to pay the license fee as required by law, then in the event of such foreign corporation having failed to comply with any of the provisions of the law as above referred to, any persons now or hereafter having any cause of action against any foreign corporation may file suit against said foreign corporation in any county in the state and service of summons or any process upon the Secretary of State shall be sufficient to give jurisdiction of the person to any court in this state having jurisdiction of the subject-matter."

The petitioner had no notice of the suit. It is within the class of corporations which the above quoted sections

specify as suitable objects for the class of service there provided.

After the judgment was rendered, and after a motion to quash service of summons had been overruled, the petitioner filed a petition to vacate the judgment (Tr., p. 29), principally upon the ground that no notice was given, nor process served, and that its constitutional rights were violated.

The statute provides that such proceeding shall be in the form of a petition, and summons shall issue thereon (section 812, C. O. S. 1921), and it has been held by the Supreme Court of Oklahoma that such a petition is in the nature of an equitable proceeding to set aside or vacate a judgment.

—*Schulte* v. *Commissioners*, 250 Pac. 123, . . . Okl. . . .
McIntosh v. *Holtgrave*, 191 Pac. 739, 79 Okl. 63.

The trial court sustained a demurrer to this petition, and the Supreme Court of Oklahoma, in sustaining the trial court, said:

> "For reversal, it is first urged that the trial court had no jurisdiction to render the original judgment in said cause for the reason that section 5442, *supra*, under which service of summons was had on the Secretary of State, is in violation of Sec. 7, Art. 2, of the Constitution of Oklahoma, and the Fourteenth Amendment to the Constitution of the United States.
>
> "Counsel advance many arguments as to why said section should be held unconstitutional, but we are bound by the opinion in *Title Guaranty & Surety Co. v. Slinker*, 42 Okl. 811, 143 Pac. 41, wherein this court held that said section does not violate the provisions

of the state or federal constitutions guaranteeing to such foreign corporation due process of law and does not deny it the equal protection of the law."

* * * * * * * *

"Said section nowhere requires the Secretary of State to notify the defendant of such proceedings. Plaintiff in error insists that it is the implied duty of the Secretary of State so to do. * * * We cannot read such a provision into the statute." (Tr., p. 226.)

The State Supreme Court, having held squarely that these sections of the State Statutes (the validity of which we had "drawn in question") do not violate the Fourteenth Amendment to the Constitution of the United States, this court has jurisdiction to review by *certiorari*. (Sec. 237, Judicial Code, as amended by Act of February 13, 1925.)

The first opinion of the Oklahoma Supreme Court (Tr., p. 216), eliminated the constitutional question, holding that when summons was served upon the Secretary of State he must give notice to the foreign corporation sued. Since the Secretary had not performed this duty, that opinion reversed the trial court.

Under this construction of the service statutes, the constitutional question does not appear. Had the Secretary of State given us notice of the suit, the Richardson Machinery Company would have had an opportunity to appear in court and present its defense, and this proceeding would not now be in this court for consideration.

But the Secretary did not give us notice. We had no knowledge of the pendency of the litigation; and, in order

that the Supreme Court of Oklahoma might write its second opinion, it was necessary for them to determine and they did determine:

1. That the sections providing for this service (sections 5436 and 5442, C. O. S. 1921) did not impliedly require the giving of notice by the Secretary of State.

2. That under this interpretation the sections referred to were constitutional.

Our First Proposition is:

A STATUTE FOR SERVICE UPON FOREIGN CORPORATIONS BY SERVING THE SECRETARY OF STATE WHICH DOES NOT EXPRESSLY OR IMPLIEDLY REQUIRE THE SECRETARY OF STATE TO NOTIFY SUCH CORPORATION THAT IT HAS BEEN SUED IS VIOLATIVE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, IN THAT IT DEPRIVES, AND HAS DEPRIVED, THE PETITIONER OF PROPERTY WITHOUT DUE PROCESS OF LAW.

Second:

THE CAUSE OF ACTION AROSE WITHOUT THE STATE OF OKLAHOMA; AND THE CONSTRUCTIVE SERVICE DOES NOT GIVE THE COURT JURISDICTION.

Of these in their order:

First Proposition.

A statute for service upon foreign corporations by serving the Secretary of State which does not expressly or impliedly require the Secretary of State to notify such corporation that it has been sued is violative of the Fourteenth Amendment to the Constitution of the United States, in that it deprives, and has deprived, the petitioner of property without due process of law.

This proposition may be stated in the form of a question, the answer to which will be determinative of this case:

Is a state authorized to adopt a statute for constructive service, which, by its own interpretation will prevent the defendant from receiving notice, rather than aid the defendant in obtaining information that a suit has been filed against it? The answer to this question, it seems to us, is contained in very terse language in the original opinion by the Supreme Court of Oklahoma:

> "To permit such judgment to stand would contravene the basic principles of American jurisprudence and shock the very soul of justice."

In fact, to ask the question is to answer it. The Fourteenth Amendment to the Constitution of the United Sates denies to any state the privilege to deprive the defendant here of its property without due process of law.

The judgment in this case, for more than $3,900.00, was rendered by default against the petitioner. It did not learn of the judgment for some months. We have cited in

the brief annexed to the petition for writ of *certiorari* the case of *Straub* v. *Lyman Inv. Co.* (S. D.), 46 L. A. R. (N. S.) 941, and *State* v. *Hooker*, 22 Okl. 712, 98 Pac. 964, in each of which the language dealing with the character of notice necessary to constitute due process of law is approximately as follows:

> "It is sufficient if a kind of notice is provided by which it is reasonably probable that the party proceeded against will be apprized of what is going on against him, and an opportunity offered him to defend."

Mr. Justice PECKHAM, in the case of *Connecticut Mutual Life Insurance Company* v. *Spratley*, 172 U. S. 603, 43 L. ed. 569, clearly indicated the necessity for some character of personal notice to the company in this language:

> "Taken in connection with the further fact of sending (as provided for in the statute), a copy of the process and notice thereof by registered letter to the home office of the company, and also the personal service upon the company of a copy of the process and notice thereof at its home office, it must be admitted that one of the chief objects of all such kinds of service, namely, notice and knowledge on the part of the company of the commencement of suit against it, is certainly provided for. We do not intimate that mere knowledge or notice as thus provided would be sufficient without a service on the agent in the state where suit was commenced, but we refer to it as a part of the facts in the case."

We refer the court to the following cases, federal and state, in each of which a statute similar to the Oklahoma

Statute has been declared unconstitutional for the reasons which we have here assigned:

King Tonopah Mining Co. v. *Lynch*, 232 Fed. 485;

Knapp v. *Bullock Tractor Co.*, 242 Fed. 543;

Southern Railway Co. v. *Simon*, 184 Fed. 959;

Cella Commission Co. v. *Bahlinger*, 147 Fed. 419 (78 C. C. A. 467);

Gouner v. *Mississippi Valley Bridge and Iron Works*, 49 Southern 657;

Pinney v. *Providence Loan & Trust Co.*, 106 Wis. 396, 82 N. W. 308;

Wildes v. *Mining Co.* (Nevada), 170 Pac. 1047.

The question has not been before decided by the Supreme Court of Oklahoma. In *Title Guaranty Co.* v. *Slinker*, 42 Okl. 811, 143 Pac. 41, the statute was said to be constitutional, but there is raised the question of discrimination, not of notice. In none of the cases which are cited in that opinion, to-wit:

Mutual Reserve Fund Co. v. *Phelps*, 190 U. S. 147;

Northwestern Life Ins. Co. v. *Riggs*, 203 U. S. 243;

Orient Ins. Co. v. *Daggs*, 172 U. S. 557,

is the question of notice involved. In fact, in the *Mutual Reserve Fund Company* case, the statute in controversy provided for the commissioner to send at once to the company, at its principal office, the notice served upon it.

SECOND PROPOSITION.

Substituted service statutes of the State of Oklahoma do not apply to causes of action arising, as in the present case, without the state.

—*Simon* v. *Southern R. Co.*, 236 U. S. 116, 59 L. ed 492.

The petition of the plaintiff is stated in five causes of action (Tr., pp. 2-9). The first cause of action was dismissed by the plaintiff, Scott (Tr., p. 15).

The second cause of action alleges that the plaintiff (a resident of Oklahoma City), ordered of the defendant (whose principal place of business is in the City of St. Joseph, Missouri), two certain shipments, which, being unsatisfactory, were returned, although shipped C.O.D. and paid for by the plaintiff. When returning these goods, the plaintiff also sent to the defendant other merchandise of the value of twenty dollars, prepaying charges thereon in the sum of three dollars.

Obviously the cause of action arose when the defendant company failed to remit to the plaintiff for the goods so returned. That is to say, it arose when the goods were received by the company in St. Joseph, Missouri, as alleged. Therefore, the cause of action arose in Missouri.

The third cause of action alleges an over-charge of $40.33, on certain goods shipped C.O.D. Perhaps this cause of action arose in Oklahoma. As a part of this cause of action, however, it is alleged that $20.50 worth of goods were returned to the defendant and that it had retained the

purchase price paid. This sum falls within the same category as the second cause of action.

The fourth cause of action sounds in tort. It is alleged that "defendant purposely and fraudulently shipped parts and repairs to plaintiff" * * * "which parts and repairs the defendant then and there well knew would not fit plaintiff's machine." It is apparent that this cause of action arose in Missouri, because the fraudulent purpose, intent and shipment were all accomplished at that point.

The fifth cause of action further alleges that "by reason of the wrongful and fraudulent acts of the defendant in purposely shipping the mismatched and non-fitting parts and repairs for said machine" he was damaged in the sum of $2,500.00. This is, of course, also an action in tort and the tort was committed in St. Joseph, Missouri, by the fraudulent shipping of the goods.

The question of liability for such tort, therefore, depends upon the laws of Missouri, and that is the place of the commission, and hence, the place where the cause of action arose.

—*Dennick* v. *Central R. R. Co.*, 103 U. S. 11, 26 L. ed. 439.

Not that the courts of Oklahoma might not enforce the action; but the courts of Oklahoma may not enforce it under their own constructive service statutes.

> "But the power to designate by statute the officer upon whom service in suits against foreign corporations may be made relates to business and transactions within the jurisdiction of the state enacting the law.

Otherwise, claims on contracts, wherever made, and suits for tort, wherever committed, might, by virtue of such compulsory statute, be drawn to the jurisdiction of any state in which the foreign corporation might at any time be carrying on business. The manifest inconvenience and hardship arising from such extraterritorial extension of jurisdiction by virtue of the power to make such compulsory appointments could not defeat the power if in law it could be rightfully exerted. But these possible inconveniences serve to emphasize the importance of the principle laid down in *Old Wayne Mut. Life Asso.* v. *McDonough*, 204 U. S. 22, 51 L. ed. 351, 27 Sup. Ct. Rep. 236, that the statutory consent of a foreign corporation to be sued does not extend to causes of action arising in other states."

—*Simon* v. *So. R. Co.*, *supra*.

Respectfully submitted,

D. Haden Linebaugh,

Paul. Pinson,

Attorneys for Petitioner.

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No. [redacted] 198

In the Supreme Court of the United States.

OCTOBER TERM, 1927

GEO. O. RICHARDSON MACHINERY COMPANY, A CORPORATION, *Petitioner*,

VERSUS

MRS. ANNIE SCOTT, ADMINISTRATRIX OF THE ESTATE OF JOHN A. SCOTT, DECEASED, *Respondent*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

REPLY BRIEF OF PETITIONER

DANIEL HADEN LINEBAUGH,
PAUL PINSON,
Attorneys for Petitioner.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1926

No. 988

GEO. O. RICHARDSON MACHINERY COMPANY, A CORPORATION, *Petitioner*,

vs.

MRS. ANNIE SCOTT, ADMINISTRATRIX OF THE ESTATE OF JOHN A. SCOTT, DECEASED, *Respondent*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA.

REPLY BRIEF *of* PETITIONER.

Respondent, in her brief, questions the right of this court to pass upon the federal question presented, because it is said the matter was not set up in the state court. We forbear to enter upon an extended discussion of this question. In addition to the suggestions contained in our original brief we however answer this contention by the following language in the case of *Boston Beer Co. v. Massachusetts*, 97 U. S. 24, 24 L. ed. 989, 991:

> "Some question is made by the defendant in error whether the point was properly raised in the state courts, so as to be the subject of decision by the highest

court of the state. It is contended that, although it was raised by plea, in the municipal court, yet, that plea being demurred to and the demurrer being sustained, the defense was abandoned, and the only issue on which the parties went to trial was the general denial of the truth of the complaint. *But whatever may be the correct course of proceeding in the practice of courts of Massachusetts, a matter which it is not our province to investigate*, it is apparent from the record that the very point now sought to be argued was made on the trial of the cause in the Superior Court, and was passed upon, and made decisive of the controversy, and was afterwards carried by bill of exceptions to the Supreme Judicial Court, and was decided there adverse to the plaintiff in error on the very ground on which it seeks a reversal.

"The Supreme Court, in its rescript, expressly decides as follows:

> 'Exceptions overruled for the reasons following:
>
> '*The Act of 1869, ch. 413, does not impair the obligations of the contract* contained in the charter of the claimant, so far as it relates to the sale of malt liquors, but is binding on the claimant to the same extent as on individuals.
>
> 'The act is in the nature of a police regulation in regard to the sale of a certain article of property, and is applicable to the sale of such property by individuals and corporations, even where the charter of the corporation cannot be altered or repealed by the legislature.'

"The judgment of the Superior Criminal Court was entered in conformity to this rescript, declaring the liquors forfeited to the commonwealth, and that a warrant issue for the disposal of the same.

"*This is sufficient for our jurisdiction*, and we are bound to consider the question which is thus raised." (Italics ours.)

The case of *Murray v. Charleston*, 96 U. S. 432, 24 L. ed. 760, is also in point. The first paragraph of the syllabus is:

"The true test of the jurisdiction of this court over state judgments is not whether the record exhibits an express statement that a federal question was presented, but whether such a question was decided, and decided adversely to the federal right."

Quoting further from the opinion:

"The jurisdiction of this court over the judgments of the highest courts of the states is not to be avoided by the mere absence of express reference to some provision of the Federal Constitution. Wherever rights acknowledged and protected by that instrument are denied and invaded, under the shield of state legislation, this court is authorized to interfere. The form and mode in which the federal question is raised in the state court is of minor importance, if, in fact, it was raised and decided. The Act of Congress of 1867 gives jurisdiction to this court over final judgments in the highest courts of a state, in suits 'where is drawn in question the validity of a statute of or an authority exercised under any state, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity.' Not a word is said respecting the mode in which it shall be made to appear that such a question was presented for decision. * * * *The true test is* not whether the record exhibits an express statement that a federal question was presented, but *whether such a question was decided, and decided adversely* to the federal right." (Italics ours.)

The opinion of the Supreme Court of Oklahoma contains the following language:

> "For reversal, it is first urged that the trial court had no jurisdiction to render the original judgment in said case for the reason that section 5442, *supra*, under which service of summons was had on the Secretary of State is in *violation of* Sec. 7, Art. 2 of the Constitution of Oklahoma, and *the 14th amendment to the Constitution of the United States*.
>
> "Counsel advance many arguments as to why said section should be held unconstitutional, but we are bound by the opinion in *Title Guaranty & Surety Co. v. Slinker*, 42 Okl. 811, 143 Pac. 41, wherein this court held that *said section does not violate the provisions of the State or Federal Constitutions* guaranteeing to such foreign corporation due process of law and does not deny it the equal protection of the law." (Tr., p. 225.) (Italics ours.)

We submit that this is a decision by the Supreme Court that section 5442, Compiled Oklahoma Statutes, 1921, does not violate the provisions of the Fourteenth Amendment to the Constitution of the United States. The question now raised "was decided, and decided adversely to the federal right."

Counsel cite the case of *American Railway Express Company v. F. S. Royster Guano Company*, 71 L. ed. [illegible], which is printed in Advance Opinions of this court, under date of March 15, 1927, page 458, wherein this court held valid the Virginia Statute for service on foreign corporations.

We call attention, however, to the fact that the Virginia Code (as quoted in the margin of that opinion), provides as follows:

> "The officer serving such process upon the chairman of the state corporation commission *shall immediately transmit a copy thereof, by mail to such corporation*, company, association, person, or partnership, and state such fact in his return."

It is because of the failure of the Oklahoma Statute to contain a similar provision that we assert it violates the Fourteenth Amendment to the Constitution of the United States.

Respectfully submitted,

DANIEL HADEN LINEBAUGH,

PAUL PINSON,

Attorneys for Petitioner

(15)

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NUMBER [redacted] 198

Supreme Court of the United States

October Term, 1926.

GEORGE O. RICHARDSON MACHINERY CO., APPELLANT,

vs.

ANNIE SCOTT, ADMINISTRATRIX OF THE ESTATE OF JOHN A. SCOTT, DECEASED, APPELLEE.

On Petition for a Writ of Certiorari to the Supreme Court of Oklahoma.

BRIEF OF APPELLEE, RESPONDENT, IN OPPOSITION TO THE SAID PETITION.

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Supreme Court of the United States

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On Petition for a Writ of Certiorari to the Supreme Court of Oklahoma.

BRIEF OF APPELLEE, RESPONDENT, IN OPPOSITION TO THE SAID PETITION.

NO FEDERAL QUESTION ARISES ON THE RECORD.

Statement.

On June 1st, 1922, there remained of record and unsatisfied in the District Court of Oklahoma County, in the State of Oklahoma, a certain final money judgment rendered by said court on October 23rd, 1920, in favor of one John A Scott, plaintiff, vs Geo O Richardson Machinery Company, a corporation, defendant, the same based on service of summons under Section 5442, Compiled Laws

of Oklahoma 1921, as in such cases made and provided (Printed record herein, pages 13-15).

On said June 1st, 1922, said judgment debtor, appellant, and petitioner here, entered its general appearance in said cause, and sought and obtained the leave of the said court to file instanter (p. 202) its verified petition to vacate the said judgment (pp. 29-33), and to re-litigate with plaintiff the several items of alleged indebtedness embraced in his said judgment, and for affirmative judgment against him on open account in the sum of $29.10, its claim of defense being set up in an answer, and its counter-claim in a cross-petition, both attached as Exhibit "A" to said petition to vacate, and made a part thereof (pp. 33-41).

Scott, in open court, waived the issuance and service of summons required by statute in such cases, reserving the prescribed 20 days' time in which to plead to the said petition to vacate (p. 202).

On June 7th, 1922, Scott filed demurrer to said petition to vacate (p. 200), the first ground thereof being as follows:

"That the said petition does not state facts sufficient to constitute a cause of action, or to entitle defendant to the relief prayed, or to any relief, from the operation of the said judgment."

On June 13th, 1922, the trial court sustained the said demurrer, and the judgment debtor having refused to plead

further, its petition to vacate the judgment was dismissed (pp. 203-4). By appropriate orders embodied in the same journal entry of judgment, its exceptions were saved, and an appeal allowed to the Oklahoma Supreme Court.

Its appeal from the order denying its petition to vacate was duly lodged and perfected.

Only two assignments of error (p. 2) appear in appellant's petition in error in the Oklahoma Supreme Court, viz:

"(1) The court erred in sustaining the demurrer to the petition to vacate judgment filed by the plaintiff in error in the District Court of Oklahoma County, on June 1, 1922.

"(2) The court erred in dismissing the petition of the plaintiff in error to vacate judgment after plaintiff in error refused to plead further."

No matters in said cause were before the Oklahoma Supreme Court for decision, other than those covered by the above quoted assignments of error 1 and 2.

In a well considered opinion, the Supreme Court of the State of Oklahoma, on November 9th, 1926, affirmed the lower court (pp. 223-8), and on December 21st, 1926, denied to the plaintiff in error (the petitioner here) a rehearing of the said cause (p. 229).

Alleging (page 8 of its printed petition herein) the existence of a Federal question of substance in said cause, decided by the said State Supreme Court erroneously to its

prejudice, the appellant, petitioner herein, now asks for Writ of Certiorari for review thereof.

BRIEF AND ARGUMENT IN OPPOSITION.

No question is present, or possible in the instant cause, other than the sufficiency of the Appellant's petition to vacate the original judgment, challenged by demurrer.

Such question is solely of State judicature, unaffected by any matter of Federal character.

A consideration of the said Petition to Vacate (pp. 29-31) in its entirety, discloses that it is based on the 7th subdivision of Section 810, Compiled Oklahoma Statutes 1921, which provides:

> "The district court shall have power to vacate or modify its own judgments or orders, at or after the term at which such judgment or order was made:
>
> . . . . . .
>
> "Seventh. For unavoidable casualty or misfortune, preventing the party from prosecuting or defending."

All allegations in the Petition to Vacate, which bear upon or have to do with the question of "unavoidable casualty or misfortune" appear in paragraph 9 thereof (pp. 31-2), which reads as follows:

"(9) The defendant has a good and meritorious defense to each and every part of the plaintiff's alleged cause of action, and, if permitted to appear and answer herein, it could establish the facts as set out in Exhibit 'A', made a part of this petition, being an answer fully verified, which answer will be filed in this cause if this petition shall be granted. And this defendant alleges that had it known or had any intimation of the pendency of the action herein, it

would have appeared and defended, as it now appears and defends; and that the rendition of such judgment, without any kind or character of notice to this defendant, is a violation of its constitutional rights and is a great misfortune, unavoidable by this defendant, which prevented this defendnat from introducing its defense at the time the cause was tried."

The above is not a setting out of the facts constituting unavoidable casualty and misfortune, as requried by the statute but is merely a statement of the pleader's own conclusion of law, which, taken with other parts of the Petition to Vacate, is, that the failure of the Secretary of State to notify the foreign corporation that process for it had been served upon him, was the direct proximate cause of its own failure to receive actual knowledge of the pendency of the original action, prior to judgment, and, *ipso facto*, constituted "unavoidable casualty and misfortune", preventing its defense.

Clearly, such Petition to Vacate was demurrable, and the appellant, having refused to plead further, suffered its petition to be dismissed.

On appeal to the Supreme Court of Oklahoma, the one question alone was involved and decided, viz:

"Did the District Court of Oklahoma County commit reversible error in sustaining Scott's Demurrer to the Defendant's Petition to Vacate the Original Judgment?"

This question having been answered in the negative, the case is at an end; there being no question of Federal

nature involved, it is not for judicial cognizance by this Court.

While Section 5442, Oklahoma Compiled Laws 1921, was before the Oklahoma Supreme Court, and by it construed in connection with this case, it is only upon that feature which has a bearing on the question before it, viz: of "unavoidable casualty or misfortune", and not as to the feature of "process" provided for therein. All questions as to "process" had become finally settled in the trial court, and were in no way involved on appeal. Anything embodied in the first paragraph of the court's syllabus (p. 223), even if erroneous, is *obiter*, as affects the law and facts of this case.

For the reason that no Federal question is presented, the petition for review by certiorari should be denied, which is accordingly asked.

Respectfully submitted,

JEAN H. EVEREST,
CHARLES L. MOORE,
Counsel for Respondent.

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Supreme Court of the United States

October Term, 1926.

No. 988.

GEO. O. RICHARDSON MACHINERY COMPANY, A CORPORATION, Petitioner,

vs.

MRS. ANNIE SCOTT, ADMINISTRATRIX OF THE ESTATE OF JOHN A. SCOTT, DECEASED, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA.

BRIEF OF RESPONDENT.

(NOTE: Respondent asks that her preliminary brief on file herein, in opposition to the Petition for Writ of Certiorari, may be taken and considered as part of this brief, as avoiding unnecessary repetition in the presentation of the record facts.)

PROPOSITIONS.

I.

No federal question arises upon the record in this cause, nor is presented for consideration here.

II.

The sole question presented to and decided by the trial court, and thereafter affirmed by the Oklahoma Supreme

Court, is whether or not the petitioner's application to vacate the original judgment of October 23rd, 1920 (challenged by demurrer), states facts sufficient, which, if true, authorizes the vacation of said judgment, as for "unavoidable casualty, or misforture", within the purview of the seventh (7th) subdivision of Oklahoma Code, Section 810. Such question is one solely of state judicature, and was correctly decided under Oklahoma state laws.

STATEMENT.

By its special appearance in the trial court, entered on July 14th, 1921 (pp. 16-18), the petitioner properly raised a federal question, viz.:

As to whether or not it was afforded that "due process of law" guaranteed to it by the Fourteenth Amendment of the Federal Constitution, by Sections 5436 and 5442, Compiled Oklahoma Statutes 1921, providing for the issuance and service of summons, on which the original judgment was based.

For the determination of such Federal question, petitioner secured the removal of said cause into the United States District Court for the Western District of Oklahoma, where the mixed question of law and fact was fully tried out and decided: (a) that the petitioner was transacting such intra-state business in Oklahoma as to render the provisions of the said statute applicable to it, and (b) that the provisions of said statutes relating to service were constitutional and valid, as affording due process of law. No appeal from this was taken, and the cause re-

manded to the State trial court to be regularly proceeded with.

The State trial court again took up and retried *de novo* the questions raised by the special appearance, arriving at the same decision as had the Federal court, and reaffirming its own findings of the jurisdictional facts embodied in its original judgment. This phase of the matter was not appealed from, but the petitioner elected to abide the decisions on such Federal question raised by its said special appearance.

Thereupon, petitioner voluntarily submitted itself to the jurisdiction of the State trial court, sought and secured its leave to file the special statutory remedy, involved here, and filing its petition to vacate the original judgment, under the seventh subdivision of Code, Section 810, on the ground that it was prevented from defending by reason of "unavoidable casualty, or misfortune", in that the Secretary of State, on whom process of summons was served, failed to notify the petitioner thereof. An answer and cross petition was attached to the said petition to vacate, as part thereof, the answer setting up defensive matter to the judgment, and the cross petition setting up a new cross cause of action against the plaintiff, Scott, and affirmatively praying for a personal money judgment against him in the sum of $29.10.

An examination of the record undisputably shows that nothing other or further was before the court, than the sufficiency of the said petition to vacate the said original judgment, attempting to set up, but which it did defectively, a set of facts that do not as a matter of law constitute a ground of unavoidable casualty, or misfortune, under said Code, Section 810.

This is conclusively shown: (a) by the application itself (pp. 29-41); (b) by the remarks of Mr. Pinson, of counsel for the petitioner (p. 197), in asking and securing the leave of court to file the same, as follows: "The defendant * * * desires to file a petition to vacate judgment under the provisions of our statute under a petition to vacate judgment"; (c) by the statement as to the matter involved, contained in the petition of error in the Oklahoma Supreme Court (p. 1): "To vacate and set aside the said judgment (of October 23, 1920), in a proceeding as authorized by the laws of the State of Oklahoma"; (d) by the two (2) assignments of error specified in the said petition in error (p. 2) as follows: "(1) The court erred in sustaining the demurrer to the petition to vacate judgment filed by the plaintiff in error in the District Court of Oklahoma County, on June 1, 1922. (2) The court erred in dismissing the petition of the plaintiff in error to vacate judgment after plaintiff in error refused to plead further"; and (e) by the prayer of the petition in error (p. 2) as follows:

"Wherefore, the plaintiff in error prays that said judgment so rendered, dismissing the petition to vacate judgment, be reversed, set aside and held for naught, and that the plaintiff in error have judgment of this court directing the trial court to sustain the petition to vacate judgment, and to vacate the judgment rendered on October 23, 1920, in favor of the defendant in error and against the plaintiff in error herein."

BRIEF AND ARGUMENT.

Under the record is hereinbefore pointed out, we submit that no Federal question can be involved; the general entry of appearance by petitioner for all purposes, invoking the powers of the court for affirmative relief, renders moot all questions as to the validity of process of summons, and cured all defects, had any there been. It is wholly immaterial at this stage of proceedings, whether or not Code Section 5442 was constitutional, as affording due process of law. To have availed itself further of the questions raised by its special appearance, the petitioner was bound to have treated the original judgment as void, and kept itself in position to restrain its collection. It recognized finally the judgment as valid, and sought to vacate it on grounds provided by State laws; this Court is without power to afford it relief. The Oklahoma State Supreme Court is final on the one question submitted to it, arising as it does only under state laws. While the first paragraph

of syllabus (p. 223) holds valid the said Code Section 5442, the principle of law therein laid down is in no way involved in the decision rendered, but is merely *obiter*. Such section has no application to the ultimate facts, except as to the third paragraph of the syllabus, as touching upon the only question before the Court, viz.: That of "unavoidable casualty, or misfortune".

On February 21, 1927, this Court, in the case of *American Railway Express Company* v. *F. S. Royster Guano Company*, held a process statute of Virginia, very similar to Oklahoma Code, Section 5442, as valid and constitutional, and refused to vacate a judgment based on the service of summons as provided therein. In that case, the petitioner had not waived the question by general entry of appearance, as was done by the petitioner here.

We ask that the petition herein be denied, and the Supreme Court of Oklahoma affirmed.

Respectfully submitted,

JEAN H. EVERETT,
CHARLES L. MOORE,
Attorneys for Respondent.

SUPREME COURT OF THE UNITED STATES.

No. 198.—October Term, 1927.

Geo. O. Richardson Machinery Co., Petitioner. *vs.* Mrs. Annie Scott, Administratrix.	On Certiorari to the Supreme Court of the State of Oklahoma.

[February 20, 1928.]

Mr. Justice Brandeis delivered the opinion of the Court.

A statute of Oklahoma provides that if a foreign corporation doing business within the State fails to appoint an agent upon whom service may be made, process served upon the Secretary of State shall be sufficient to give jurisdiction of the person to any court having jurisdiction of the subject matter. Compiled Oklahoma Statutes (1921) §§ 5436, 5442.

In September, 1920, Scott, a resident of Oklahoma, brought in a district court of the State an action of contract against the Geo. O. Richardson Machinery Co., a Missouri corporation. He alleged in his petition that the defendant was a foreign corporation doing business in Oklahoma and that it had failed to appoint an agent upon whom process might be served. He asked leave to serve the summons upon the Secretary of State as provided in the statute. There was a praecipe for summons pursuant to the statute; the summons issued; and it was served as in the statute provided. The defendant having failed to enter an appearance within the time limited, judgment by default was, in October, 1920, entered for the amount claimed.

In July, 1921, which was after the expiration of the term at which the judgment was entered, the corporation filed what it called a "Special appearance and motion to quash summons and service thereof and to set aside and vacate judgment." The motion set forth that the corporation had not had actual notice of the action or the judgment; that, for this reason, it had not had an opportunity to defend; that it had and has a valid defense to the cause

of action sued on; that it is not indebted to the plaintiff in any amount; and that if it had had notice, it would have interposed a defense. It alleged further that it had never engaged in business within the State; that it does, and has done, with residents of Oklahoma a purely interstate business; that the Secretary of State was not by contract or law its agent upon whom service could be made; that the statute authorizing service upon the Secretary of State was, as applied to it, a violation of the due process clause of the Fourteenth Amendment; and that the trial court had no jurisdiction. It prayed that the summons and return be quashed and that the judgment rendered be set aside.

The proceedings which followed the filing of this motion to quash and vacate extend over a period of more than six years. The report of them occupies more than 200 pages of the printed record. Immediately after filing the motion, the corporation sought from the state district court, and obtained, an order removing the cause to the federal court on the ground of diversity of citizenship. There the case was heard on the motion to quash the summons and vacate the judgment. On April 27, 1922, after proceedings which it is unnecessary to detail, the federal court remanded the cause to the state court, because the petition for removal had not been filed in time.

On June 1, 1922, the case came on for hearing in the state court on the motion to quash the summons and to set aside the judgment. The motion was overruled; and exceptions were allowed. Then the corporation was granted leave to file instanter a petition, under § 810 of the Compiled Statutes (1921), to vacate the judgment. That section provides that the district court shall have power in nine classes of cases to vacate or modify its own judgments or orders, at or after the term at which such judgment or order was made. Among these are: "Fourth. For fraud, practiced by the successful party, in obtaining the judgment or order," and "Seventh. For unavoidable casualty or misfortune, preventing the party from prosecuting or defending."

On the same day, a new pleading entitled "Petition to Vacate Judgment" was filed. This petition did not contain an allegation that the corporation's appearance was special and solely to contest the jurisdiction of the court; nor did it seek to quash the summons issued and served. In addition to allegations made in the

motion filed in July, 1921, the new petition alleged that the service was based upon an allegation fraudulently made that the corporation was engaged in business in Oklahoma within the meaning of the statute relative to service; that the judgment was rendered upon false and fraudulent testimony given in support of the allegation that the defendant was indebted to the plaintiff; that in fact plaintiff was indebted to the corporation in the sum of $29.10; that if it, the corporation, violated the state law by failing to appoint an agent, it had done so unconsciously; that in any event it was entitled to be notified of the pendency of the action; that by fraud the plaintiff concealed from it the fact that the action had been instituted; and that there was no duty devolving upon the Secretary of State to notify it. It alleged further, as required by § 814 of the Compiled Statutes, that it had a meritorious defense, that this would have been interposed if it had known of the pendency of that action; that if permitted now to appear and defend, it could and would establish the defense. Annexed to the petition was a copy of the answer which the corporation proposed to file if its prayer to vacate the judgment should be granted. This answer included a counterclaim for the small balance alleged to be due to the corporation. The petition alleged further that a levy upon the corporation's property to enforce the judgment was threatened; offered a bond conditioned to pay the judgment, if sustained; and prayed for a stay of execution pending a hearing on the petition to vacate. As final relief the petition prayed that the judgment be vacated; that the corporation be permitted to file the answer annexed and make proper defense; and that it have other and proper equitable relief.

To this petition to vacate a demurrer was interposed. There was a hearing upon the demurrer; it was sustained; the petition was dismissed, upon refusal of the corporation to plead further; and on June 19, 1922, a stay of the execution, pending an appeal, issued. In October, 1924, the Supreme Court of Oklahoma reversed the judgment dismissing the petition to vacate. — Okla. —. Its decision was rested solely upon the ground that, under the statute, the Secretary of State was required to give the defendant corporation notice of the service of the summons upon him; that he had failed to do so; that, since the corporation lacked actual knowledge, there was an "unavoidable casualty or misfortune pre-

venting the party . . . defending" as defined in sub-paragraph Seventh of § 810 of the Compiled Statutes of Oklahoma; and that, therefore, the case should be remanded for further proceedings. In December, 1925, a rehearing was granted.

In November, 1926, the Supreme Court of Oklahoma reversed itself and affirmed the judgment of the trial court dismissing the petition to vacate. — Okla. —. In its second opinion it recited the claim that the statute authorizing service upon the Secretary of State violated the due process clause of the Fourteenth Amendment; stated that the validity of the statute had been sustained in *Title Guaranty & Surety Co.* v. *Sinker*, 42 Okla. 811, which was binding upon it; and, then exercising jurisdiction, it held that relief could not be had under clause Seventh of § 810, because the corporation's lack of knowledge of the commencement of the action was not due to "unavoidable casualty or misfortune" but to its own failure to appoint an agent as required by the law of the State. As leading to that conclusion, it held further that the Secretary of State was not under a duty to send notice of the summons.

This Court being of opinion that the constitutionality of the statute concerning service, as so construed, was questionable, and that the question of its validity was one of general importance, granted the petition for a writ of certiorari. 274 U. S. 729. Further study of the record discloses that the discussion by the state court of this constitutional question was unnecessary to the result reached by it. The jurisdictional question—and hence the constitutional question—had already been eliminated earlier in the opinion. For the court had held that by filing the petition to vacate under § 810, the corporation had, in effect, entered a general appearance. This was true, because embodied in the petition were several non-jurisdictional grounds of relief, including, among others, fraudulent conduct on the part of the plaintiff and the meritoriousness of the corporation's defense; and because the corporation sought affirmative relief against the original plaintiff.

Since the founding of the State, it has been the settled law of Oklahoma that where a person against whom a judgment is rendered files a petition to vacate the judgment upon the ground that the court had no jurisdiction of the defendant, and the petition is based also on non-jurisdictional grounds, such as those mentioned in sub-

paragraphs Fourth and Seventh of § 810, the filing of the petition operates as a voluntary general appearance, with the same effect as if such appearance had been made at the trial.[1] It was probably because this rule had been so long settled, that the Supreme Court of Oklahoma deemed it unnecessary to enlarge upon the subject or to cite any of the many cases in which the rule had been acted on.

As the decision of that court was rested, and may rest, on this rule—an adequate non-federal ground—the writ must be dismissed, *Bilby* v. *Stewart*, 246 U. S. 255, 257; *Doyle* v. *Atwell*, 261 U. S. 590, 591.

Dismissed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

[1]Rogers v. McCord Collins Mercantile Co., 19 Okla. 115, 118; Lookabaugh v. Epperson, 28 Okla. 472; Welch v. Ladd, 29 Okla. 93, 98; Zinka v. Avey, 36 Okla. 405, 408; Pratt v. Pratt, 41 Okla. 577; Hill v. Persinger, 57 Okla. 663; Myers v. Chamness, 102 Okla. 131; Burnett v. Clayton, 123 Okla. 155.